United States Court of Appeals

for the Second Circuit

APPENDIX

75-1197

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

NORMAN RUBINSON, EDGAR REYNOLDS,
WILLIAM CHESTER, LAWRENCE LEVINE,

Defendants-Appellants.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Vol. I—Pages 1a to 365a

SHEA GOULD CLIMENKO KRAMER & CASEY
Attorneys for Defendants-Appellants
Norman Rubinson & Lawrence Levine
330 Madison Avenue
New York, New York 10017
(212) 661-3200

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Plaintiff-Appellee
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007

UNITED STATES COURT OF APPEALS
FILED
OCT 16 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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C. Form No. 100

RIMINAL DOCKET

JUDGE MOTLEY

1a DOCKET ENTRIES

74 CRIM. 573

TITLE OF CASE	ATTORNEYS
UNITED STATES OF AMERICA, - v - 1 NORMAN RUBINSON, all cts. 2 SIDNEY STEIN, -1-18 3 ALBERT FEIFFER, -1-18 4 WILLIAM CHESTER, -all cts. 5 EDGAR REYNOLDS, -1, 14-18. 6 JEROME HASKELL, -1-13. 7 LAWRENCE LEVINE, -1-13. 8 WALTER WAX, -1-13. 9 PHILIP KAYE, and-1-13. 10 MICHAEL GARDNER, -1-13, 19&20. Defendants.	*For U.S.:* Frank H. Wohl, AUSA 264-6292 *For Defendant:*

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED			
			DATE	NAME	RECEIVED	DISBURSED
4)						
ine,						
lerk, $6 10 2 9 13						
arshal, 4, 5, 7						
ttorney,						
15, 18						
371, 77q, 78j; 1343						
nsp. to viol. Securities Laws (Ct. 1)						
curities fraud. (Cts. 2-18)						
re fraud. (Cts. 19 & 20)						
Twenty Counts)						

DATE	PROCEEDINGS
.4-74	Filed indictment.
-17-74	Deft. Rubinson appears (no Atty.). Court directs a plea of N/G be ente 10 days for Motions. Bail fixed by court at $20,000 Personal Recogniza Bond. Deft. to be photographed & fingerprinted. Bail limits extended Continental United States and Dominican Repuplic, also to notify U.S. Atty. 48 hours before leaving U.S. Knapp,J.
	Deft. Feiffer appears (Atty.) present Deft, pleads N/G. Bail fixed by court at $20,000 Personal Recognizance Bond. Deft. to be Photographed and fingerprinted. Bail limits to extend to Continental U.S. and Cana Notify U.S. Atty. 48 hours before leaving the country. Knapp,J.

2a DOCKET ENTRIES

PROCEEDINGS	CLERK'S FEES PLAINTIFF		DEFENDANT	
$20,000 Personal Recognizance Bond. Deft. to be Photographed and Fingerprinted. Deft. to surrender passport. Bail limits extend to Continental U.S. Knapp,J.				
Deft. Reynolds present (no Atty.). Court directs a plea of N/G be entered. Bail fixed by court at $20,000 Personal Recognizance Bond. Deft. to be Photoghraphed and Fingerprinted. Deft. to surrender passport. Bail limits extended to Continental U.S. Knapp.				
Deft. Levine, Wax, Haskell & Kaye appear (Atty. Present) Deft's. plead N/G. Bail fixed by court at $20,000 Personal Recognizance Bond for each Deft. Each Deft. to be Photographed and Fingerprinted. Bail limits to extend to the Continental U.S. for each Deft. Knapp,J.				
Deft. Gardner present (Atty. Present. Deft. pleads N/G. Bail fixed by court at $20,000 Personal Recognizance Bond. Deft. to be Photographed & Fingerprinted. Deft. to surrender his passport. Bail limits to extend Continental U.S. and Canada. Must notify U.S. Atty. 48 hours before leaving the U.S. Knapp,J.				
Case assigned to Judge Motley for all purposes.				
N.RUBINSON - Filed unsecured bond in amt.of $20,000.				
A.M.FEIFFER - Filed unsecured bond in amt.of $20,000.				
W. CHESTER - Filed unsecured bond in amt.of $20,000.				
E.M.REYNOLDS - Filed unsecured bond in amt. of $20,000.				
J.HASKELL - Filed unsecured bond in amt.of $20,000.				
L.LEVINE - Filed unsecured bond in amt.of $20,000.				
W.WAX - Filed unsecured bond in amt.of $20,000.				
P.KAYE - Filed unsecured bond in amt.of $20,000.				
M.GARDNER - Filed unsecured bond in amt.of $20,000.				

(See page 2a for Atty's)

DOCKET ENTRIES

DATE	Appearance Sheet	PROCEEDINGS
6-19-74		WALTER WAX - Filed notice of appearance by Sol M.Stendig 111 B'Way NYC 2
6-19-74		PHILIP KAYE - Filed notice of appearance by Morrison,Paul Stillman & bail 110 East 59th St. NYC 593-0100
6-19-74		ALBERT FEIFFER - Filed notice of appearance by Morton S.Robson 450 Park A NYC 371-3900
6-19-74		JEROME HASKELL - Filed notice of appearance by Emanuel Thebner 369 Lexin NYC 687-3633
6-19-74		MICHAEL GARDNER - Filed notice of appearance by Morton Berger 54 Durham R White Plains,N.Y.10607 (914)948-5908
6-19-74		LAWRENCE LEVINE - Filed notice of appearance by Jay W.Kaufmann 111 B'Way DI 9-3030
6-24-74		JEROME HASKELL- Filed Affidavit & Notice of Motions for an order purs t FRCP., dismi ssing Counts One through Thirteen on the grounds specif annexed motion to dismiss etc. as indicated before Motley, J. on 7-15-7
6-24-74		JEROME HASKELL- FILED MOTION OF DEFT. HASKELL FOR PRODUCTION AND IN GRAND JURY MINUTES.
6-24-74		JEROME HASKELL- FILED MOTION OF DEFT HASKELL to dismiss Counts (1) thro of the indictment.
6-24-74		JEROME HASKELL- FILED MOTION OF DEFT. HASKELL for discovery and inspecti the production of documentary evidence purs to Rule 16(a) (1) and (3) an of the Federal Rules of Criminal Procedure.
6-24-74		JEROME HASKELL-Filed Motion of deft Haskell for Bill of Particulars pur of the F.R.C.P.
6-24-74		JEROME HASKELL - Filed memorandum in support of deft Haskell's motions

NO FURTHER ENTRIES

DOCKET ENTRIES

DATE	PROCEEDINGS
6-24-74	S.STEIN - Deft present (No atty.) Court directs a plea of Not Guilty be e 10 days for motions. Deft to F/P & R.O.R. Bail limits to extend the continental U.S....Notify U.S.Atty. 5 days in advance if he is leavi U.S.....Knapp, J.
6-26-74	W.K.CHESTER - Filed notice of motion to dismiss the indictment.
7-2-74	ALBERT FEIFFER - Filed Consent Order extending bail limits to Dominican to 7-7-74. Motley, J.
7-3-74	EDGAR REYNOLDS- Filed defts Financial Affidavit.
8-12-74	WALTER WAX - Filed consent to change of atty's LAWRENCE LEVINE
8-26-74	J.J.HASKELL - Filed supplemental motions for dismissal of the indictment.
8-28-74	ALBERT FEIFFER - Filed affdvt.& ~~order-to-show-c~~ notice of motion to dismi indictment....Ret.9-3-74..
8-30-74	MICHAEL GARDNER - Filed motion for bill of particulars.
8-30-74	MICHAEL GARDNER -Filed memorandum in support of bill of particulars
8-30-74	Michael GARDNER - Filed motion to strike surplusage
8-30-74	MICHAEL GARDNER - Filed memorandum in support of motion to strike.
9-3-74	W.K.CHESTER - Filed motion to dismiss indictment for pre-indictment delay
9-3-74	W.K.CHESTER - Filed motion to dismiss because prosecutor misled grand jury
9-3-74	W.K.CHESTER - Filed motion for appointment of an atty.
9-3-74	W.K.CHESTER - Filed motion for discovery and inspection
9-3-74	W.K.CHESTER - Filed motion for production of documents
9-3-74	" " " " Filed motion for change of venue
9-3-74	" " " " Filed motion to strike
9-3-74	" " " " Filed motion for bill of particulars
9-3-74	" " " " Filed motion to dismiss pursuant to rule 12
10-11-74	Filed transcript of record of proceedings, dated 6-27-74
10-17-74	Filed Affidavit & Notice of Motion by defts. W. Wax and L. Levine, for a requiring the government to serve and file a Bill of Particulars etc, as rtble before Motley, J. on date and place fixed by the Court.
10-17-74	Filed memorandum in support of the pre-trial motions of defts. Wax a
11-1-74	N.RUBINSON - Filed affdvt.of service by mail.
11-11-74	W.K.CHESTER - Filed motion to adopt other defts pretrial motions etc.
11-15-74	W.K.CHESTER - Filed memo endorsed on motion filed 11-11-74...SO ordred...
11-27-74	NORMAN RUBENSON ET.AL. - Filed Govt's notice of readiness for trial...

DOCKET ENTRIES

DATE	PROCEEDINGS
11-27-74	Filed stip. and order enlarging bail limits for JEROME J.HASKELL. /EDGAR REYNOLDS
12-2-74	Filed affdvt. of Frank H.Wohl,AUSA in opposition to motion to dismiss.
12-2-74	Filed memorandum of the U.S.in opposition to defts pre-trial motions
12-2-74	Filed affdvt.of Frank H.Wohl,AUSA in opposition to motion for dismissal due to pre-indictment delay
12-18-74	N.RUBINSON, ET.AL. - Filed bill of particulars.
12-17-74	Filed transcript of record of proceedings, dated 6-17-74
12-20-74	N.RUBINSON - Hearing on representation of counsel begun & concluded..Deft to turn over passport to the U.S.Atty.....Motley, J.
12-23-74	Filed transcript of record of proceedings, dated Dec. 5, 6, 1974
12-27-74	MICHAEL GARDNER - Filed affdvt. & notice of motion for an order dismissing the indic and order for immediate trial...Ret.1-3-75
12-30-74	WILLIAM K.CHESTER - Filed motion to dismiss on grounds of illegality of the extensic of the Grand Jury
1-7-75	MICHAEL GARDNER - Filed motion to dismiss pursuant to rule 12
1-7-75	MICHAEL GARDNER - Filed memorandum of law in support of above motion to dismiss.
1-7-75	JEROME HASKELL - Filed notice of motion to dismiss on ground of alleged grand jury extension.
1-7-75	Filed supplemental bill of particulars
1-7-75	JEROME HASKELL: Filed memorandum in support of his motion to dismiss the indictme
1-7-75	SIDNEY STEIN - Deft & Atty.present..Withdraws plea of not guilty...PLEADS GUILTY t 1,7 & 14..Pre-sentence investigation ordered..Sentence adj'd to 3-18-75 11 a.m. Deft cont'd. on present bail (R.O.R.) Bail limits extended to the continental U.S.....Motley, J.
1-10-75	S.STEIN - Filed petition to enter plea of GUILTY...So ordered Motley,J.
1-14-75	PHILIP KAYE, Charles Stillman of counsel, Deft withdraws plea of not guilty, PLEAD GUILTY to count 1...P.S.I. ordered. Sentence adjd to March 18,1975..Deft.R.C MOTLEY, J.....
1-17-75	Filed memorandum opinion #41752 Re Grand Jury..On Jan.10-75 the court denied all deft's motions to dismiss the indictment on the theory that the grand jury returne indictment during a period it had been unlawfully extended***Accordingly defts motions based on multiple special grand jueiwa and impermissible extensions were also denied.....Motley,J....Mailed notice

—Cont'd on PAGE 5—

DOCKET ENTRIES

DATE	PROCEEDINGS
1-29-75	Filed true copy of U.S.C.A. order that petition for writ of mandamus and pr be and it hereby is denied.
1-22-75	N.RUBINSON - Jury trial begun before Motley,J. A.FEIFFER W.CHESTER E.REYNOLDS J.HASKELL L.LEVINE W.WAX M.GARDNER
1-23-75	Trial Cont d.
1-24-75	Trial cont d.
1-27-75	Trial cont d.
1-30-75	Trial cont d.
1-31-75	Trial cont d.
2-3-75	Trial cont d.
2-4-75	Trial cont d.
2-5-75	Trial cont d.
2-6-75	Trial cont d.
2-7-75	Trial cont d.
2-10-75	Trial cont d. 12
2-14-75	EDGAR REYNOLDS - Filed order to Marshal to serve subpoenas under crimina act Motley,J.....copies given to Marshal....
2-11-75	Trial cont'd.
2-12-75	Trial cont'd.
2-13-75	Trial cont'd.
2-14-75	Trial cont'd.
2-18-75	Trial cont'd.
2-19-75	Trial cont'd
2-20-75	Trial cont'd. AND 2-21-75 Trial cont'd.
2-24-75	Trial cont'd.
2-25-75	Trial cont'd.
2-26-75	Trial cont'd.
2-27-75	Trial cont'd. 23
3-3-75	N. RUBINSON: FILED ONE (1) Manila Envelope Sealed and Impounded and p in Rm 602. By Order of Motley, J.
3-5-75	Filed transcript of record of proceedings, dated JAN. 8, 1975
3-5-75	Filed transcript of record of proceedings, dated JAN. 8, 9, 10, 1975
3-5-75	Filed transcript of record of proceedings, dated JAN. 10, 1975

DOCKET ENTRIES

DATE	PROCEEDINGS
3-6-75	Filed order that pursuant to 18 U.S.C.6002 and 6003 that Yahuda Weiss is ordered and compelled to give testimony etc.....Motley, J....
2-28-75	Trial Cont'd.
3-3-75	Trial Cont'd.
3-4-75	Trial Cont'd.
3-5-75	Trial cont'd.
3-6-75	Trial Cont'd.
3-7-75	Filed one envelope ordered sealed & impounded and placed in vault Room 602..Motley
3-10-75	MICHAEL GARDNER - Filed memorandum of law.
3/10/75	Filed transcript of record of proceedings, dated 1-27-75
3/10/75	Filed transcript of record of proceedings, dated 2-14-75
3/10/75	Filed transcript of record of proceedings, dated 1-9-75
3/10/75	Filed transcript of record of proceedings, dated 1-14-75
	Filed transcript of record of proceedings, dated
3-7-75	Tri l con't'd.
3-10-75	Trial cont'd.
3-11-75	Trial cont'd.
3-12-75	Trial cont'd.
3-13-75	Trial cont'd.
3-14-75	Trial cont'd.
3-17-75	Trial cont'd.
3-18-75	Trial cont'd...Govt's motion to Dismiss Counts 20 as to RUBINSON & CHESTER Gran
3-20-75	W.WAX - Filed memorandum in opposition to introduction of evidence of a prior L.LEVINE- consistent statement....
3-19-75	Trial cont'd.
3-20-75	Trial cont'd.
3-21-75	Trial cont'd.Jury deliberations begun at 8:30 P.M.
3-22-75	Trial cont'd. deliberations cont'd.
3-23-75	Trial cont'd. deliberations cont'd. Jury returns a verdict...Defts. JEROME HASKELL MICHAEL GARDNER, WALTER WAX NOT GUILTY on all Counts... NORMAN RUBINSON Guilty on Cts.1 & 14.....ALBERT FEIFFER Guilty on 1,3 & 14.... LAWRENCE LEVINE Guilty on Ct.1.....WILLIAM CHESTER Guilty on Ct.14....Edgar REYNOLDS Guilty on ct.14....P.S.I. ordered as to all deft's.found guilty RUBINSON - Bail cont'd. $20,000 P.R.B. Sent.5-15-75 11 am Bail limits extended Miami,Fla. & N.Y. only. FEIFFER-Bail cont'd $20,000 P.R.B. Sent. 5-15-75 11 a.m Bail limits extended to Miami,Fla. & N.Y. only.....LEVINE-Bail cont'd.$20,000 P R.B. Sent.5-15-75 11 a.m. Limits extended Nevada & N.Y. only

(Cont'd. on Page 7)

DATE	PROCEEDINGS
3-23-75	(Cont'd.from page 6....WILLIAM CHESTER Bail cont'd. $20,000 P.R.B. Sent.adj' 5-15-75 11 a.m. bail limits extended to Miami,Fla. & N.Y. only... EDGAR REYNOLDS...Bail cont'd at $20,000 P.R.B. Sent. adj'd to 5-15-75 bail limits extended to Miami,Fla. & N.Y. only. Jury discharged Court to 4 P.M. trial concluded....MOTLEY, J.....
3-25-75	Filed requested additional instructions...dtd.3-22-75 6 P.M.
3-31-75	P.KAYE - Filed one manila envelope ordered sealed impounded and placed in Room 602...
3-31-75	S.STEIN - Filed one manila envelope ordered sealed impounded and placed i Room 602...
3-28-75	SIDNEY STEIN - Filed Judgment(# 75,272)Atty.Leonard Glass,present..T committed for imprisonment for a period of FIVE YEARS on count 1 and FI $10,000....TWO YEARS on count 7 and FINED $10,000...Prison sentence on 1 and 7 to run concurrently with each other...FIVE YEARS on count 14 ar FINED $5,000...Prison sentence on Ct.14 to run CONSECUTIVELY with sente imposed on count 1...TOTAL fines of $25,000 to be paid or deft is to st committed until the fines are paid or he is otherwise discharged accord to law...Cts.2,3,4,5,6,8,9,10,11,12,13,15,16,17 and 18 are dismissed or motion of deft's counsel with the consent of the Govt...MOTLEY, J.....
3-28-75	PHILIP KAYE - Filed Judgment(Atty.Charles Stillman,present)the deft is co for imprisonment for a period of ONE YEAR and ONE DAY...Cts.2,3,4,5,6,7 10,11,12 and 13 are dismissed on motion of defts counsel with the conse the Govt.....Motley, J.....Ent.3-31-75
4-1-75	N.RUBINSON, ET.AL.-Filed Govt's proposed examination of prospective juror
~~xxxxxxx~~	
4-1-75	Filed memorandum of law in support of defts Wax and Levine's motion to di
4-1-75	Filed transcript dtd. 6-27-74.
4-1-75	E.REYNOLDS - Filed motion for discovery and inspection and bill of parti
4-1-75	W.WAX L.LEVINE - Filed proposed examination on the voir dire..
4-1-75	M.GARDNER - Filed memorandum in support of objection to certain evidenc
4-1-75	E.REYNOLDS - Filed notice of motion to dismiss the indictment.
4-1-75	E REYNOLDS - Filed notice of motion to dismiss for prosecutorial miscond
4-1-75	E.REYNOLDS - Filed memorandum of law.
4-2-75	P. KAYE — [illegible] enforced return [illegible] delivered to 7-D.
4-24-75	Filed transcript of record of proceedings, dated 12-20-74
5-1-75	WILLIAM CHESTER - Filed post motion to strike jury verdict...
5-1-75	WILLIAM CHESTER - Filed defts request for court assigment of appeal atty.

DATE	PROCEEDINGS
5-2-75	NORMAN RUBINSON - Filed notice of motion for an order pursuant to Rule 29(c) setting aside the jury verdict..Or for a new trial etc. Ret.5-15-75 at 11A.M
5-2-75	LAWRENCE LEVINE - Filed notice of motion for an order setting aside the jury verdi Or for a new trial.....Ret.5-15-75...
5-14-75	Filed transcript of record of proceedings, dated JAN. 22, 23, 24, 30, 31, 1975
5-14-75	Filed transcript of record of proceedings, dated Feb. 3, 4, 5, 6, 1975
5-14-75	Filed transcript of record of proceedings, dated Feb. 13, 18, 19, 20, 1975
5-14-75	Filed transcript of record of proceedings, dated Feb. 7, 10, 11, 12, 1975
5-14-75	Filed transcript of record of proceedings, dated Feb. 21, 24, 25, 26, 1975
5-14-75	Filed transcript of record of proceedings, dated FEB 27, 28, MAR. 3, 4, 1975
5-14-75	Filed transcript of record of proceedings, dated MAR. 5, 6, 7, 10, 1975
5-14-75	Filed transcript of record of proceedings, dated MAR. 11, 12, 13, 14, 1975
5-14-75	Filed transcript of record of proceedings, dated MAR 17, 18, 19, 20, 1975
5-14-75	Filed transcript of record of proceedings, dated MAR. 21, 22, 23, 1975
May 15-75	NORMAN RUBINSON: Filed notice of appeal to USCA from judgment of May 15, 1975. Mailed copies to Norman Rubinson at 22N. Hibiscus Dr Miami Beach, Fla. & U.S. Atty.
5-15-75	NORMAN RUBINSON - Filed Judgment(Atty.Thomas A.Andrews,present)The deft. is commit for imprisonment for a period of THREE YEARS on each of counts 1 and 14 to run concurrently with each other..Bail pending appeal fixed at $30,000, cash or surety..The court recommends commitment at Eglin,A.F.B. in Florida. ...Motley, Ent.5-20-75----------
5-15-75	ALBERT FEIFFER - Filed Judgment(Atty.Morton Robson,present)The deft is sentenced TWO YEARS on each of Cts.1,3 and 14 to run concurrently with each other, EXECUTION OF SENTENCE SUSPENDED, deft placed on probation for THREE YEARS subject to the standing probation order of this court, probation to commence upon expiration of period deft is now serving in indictment (73 Cr.421) imposed on June 21, 1973.... Special conditions of probation,.Deft not to engage in any type stock transaction during probationary period....MOTLEY, J.....Ent.5-20-75------
5-15-75	WILLIAM CHESTER - Filed Judgment(Without counsel)the court advised deft of right to counsel,and deft waived assistance of counsel..The deft is sentenced to THREE YEARS, EXECUTION OF SENTENCE SUSPENDED. Deft placed on probation for THREE YEARS, subject to the standing probation order of this Court...Special conditions of probation deft not to engage in any type of stock transactions during p obationary period....MOTLEY, J.....Ent.5-20-75-----

-Cont'd.on page 9-

DATE	PROCEEDINGS
5-15-75	EDGAR REYNOLDS - Filed Judgment(Atty.Dave Keegan,present)The deft is ser THREE YEARS, EXECUTION OF SENTENCE SUSPENDED. Deft placed on THREE probation subject to the standing probation order of this Court...Sp conditions of probation deft not to engage in any type of stock trar during probationary period.....Probation stayed pending appeal....M(Ent.5-20-75---------
5-16-75	N.RUBINSON - Atty's present.Hearing held and concluded - Deft cont'd. on pending appeal providing he post deed to house and $10,000 by 4 p.m. T May 20,1975..Deft to remain within the jurisdiction of the Court unti procedures have been approved....Motley,J....
5-20-75	Filed Affirmation of Ch. J Edelstein, dated January 9-75, regarding Sp Jury proceedings, etc.
5-20-75	Filed Affidavit of Shirah Neiman, Assist. U.S. Attorney, dtd:January 9 support of Government's contention that the April 1972 Special Grand J an Organized Crime Control Act Special Grand Jury and thus extendable the provisions of 18 U.S.C.sect. 3331 (a).
5-20-75	Filed Affidavit of Myles J. Ambrose, dated January 8-75, in support o contention that the April 1972 Special Grand Jury #1 is a "special gra in the meaning of the Organized Crime Control Act of 1970.
5-20-75	Filed Affidavit of Andrew J. Maloney, dated January 9-75, in support o contention that the April 1972 Special Grand Jury #1 is a "special gra
5-20-75	Filed Affidavit of Frank H. Wohl, Assist. U.S. ATTorney, dated January opposition to the motions of defendants WILLIAM CHESTER, dated Decembe defendant Jerome Haskell dated January 6-75 and the undated motion of Michael Gardner received by the U.S. Attorney's office on January 7-75 seeking dismissal of the indictment on the ground that the grand jury the indictment was not lawfully impaneld at the time the indictment wa
5-20-75	N.RUBINSON- Defts bail limits pending appeal extended to Miami,Fla. xxxM
5-21-75	S. STEIN- Filed Affidavit of Frank H. Wohl (AUS), dated 5-21-75.
5-22-75	W.CHESTER - Filed memo endorsed on request for court assignment of appe with memo endorsed....The foregoing motion denied...Motley,J.
5-22-75	W.CHESTER - Filed memo endorsed on motion to strike jury verdict...The f motion denied.....Motley,J.
5-23-75	EDGAR M.REYNOLDS- Filed notice of appeal from judgmt.of 5-15-75 copy gi Atty. and Mailed to defts atty.McCoyd & Keegan 1000 Franklin Ave. Gard N.Y.******The Court finds deft is indigent ***Mr.Keegan is ordered to to represent him until relieved by the Court of Appeals. Permission is for deft to proceed xin forma pauperis ....Motley,J.
5-23-75	WILLIAM K. CHESTER - Filed notice of appeal from final judgment entered copy sent to AUSA and mailed to deft 955 N.E. 80th St. Miami,Fla.
5-29-75	Filed consent order that the clerk transmit four sealed envelopes**to th and placed in the cashier's vault upon their return.....Motley,J.

DATE	PROCEEDINGS #75,486
5-29-75	LAWRENCE LEVINE - Filed Judgment(Atty.Thomas Andrews,present)The deft is sentenced to EIGHTEEN MONTHS Imprisonment..Execution of sentence is suspended..Deft.is placed on Probation for a period of TWO YEARS, subject to the standing probation order of this Court, and deft is fined $10,000.00 to be paid within THIRTY DAYS of this Judgment...Deft. is to stand committed until the fine is paid or deft. is otherwise discharged according to law....Motley, J ...Ent.5-29-75------
6-5-75	LAWRENCE LEVINE - Filed notice of appeal from judgment of May 29-75 /copy mailed to U.S.Atty. by defts atty.
6-9-75	SIDNEY STEIN -Filed affdvt.of Frank H.Wohl,AUSA in support of a writ..Ret.forthwith.
6-18-75	E.REYNOLDS - Filed memo endorsed on unsigned order...The proposed order***is denied. Motley, J.....m/n
6-19-75	L.LEVINE - Filed affdvt. & notice of motion for order pursuant to Rule 38(3)and(4) staying pending determination of appeal the order of May 29-75..
un 19-75	Filed Memorandum of law in support of post-trial motions of defts. Rubinson & Levine.
n 19-75	Filed Government's memorandum of law in opposition to post-trial motions
un 19-75	Filed Government's memorandum of law in opposition to motions.
un 19-75	Filed Government's affidavit in opposition to deft. Levine's motion.
un 19-75	Filed affdvt. in opposition to post-trial motion of deft. Rubinson.
un 19-75	Filed deft. Feiffer's notice of motion for judgment of acquittal.
un 19-75	FEIFFER: Memorandum of law in support of motion to dismiss,
un 19-75	FEIFFER: Affidavit of Albert Feiffer re: compensation to counsel.
un 19-75	WAX-LEVINE: Requests to charge.
6-20-75	NORMAN RUBINSON -.Filed the following papers received from Mag.Raby: Docket entry sheet Appearance Bond
6-23-75	L.LEVINE & N. RUBINSON - Filed designation of exhibits by stip.
6-23-75	L.LEVINE & N. RUBINSON - Filed stip.to forward supplemental record.
6-23-75	N.rRUBINSON - Filed notice that the original record on appeal has been certified and transmitted to the U.S.C.A.
6-30-75	PHILIP KAYE... deft's affdvt. and notice of motion for reduction of sentence pursuant to F.R.C.P. 35
7-1-75	LAWRENCE LEVINE... affdvt. of John J. Grimes and notice of motion for an order pursuant to Rule 38 (3) and (4) FRCP, directing the Clerk of the Court to return a check in the amount of $ 10,000., deposited with the Clerk, to LAWRENCE LEVINE.
Jul 11-75	LEVINE: Filed affidavit of Asst. U.S. Atty. Jupiter in opposition to payment out of the registry of the Court.

(CONT'D - PAGE # 11)

12a DOCKET ENTRIES

C 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date C Judgme
7-11-75	LAWRENCE LEVINE.... filed Order-- that the Clerk of this Court, return, forthwith, the check, in the amount of $10,000.00 forwarded to this Court, to Lawrence Levine or to his attys., Shea Gould Climenko Kramer & Casey... Motley,J. ..... (m/n)	
7-21-75	Filed transc... ...dings, dated March 28, 1975	
7-21-75	Filed transc... ...dings, dated May 15, 1975	
07-21-75	Filed transcrip... ...proceedings, dated May 15, 1975	
07-21-75	Filed transcrip... ...proceedings, dated May 15, 1975	
07-21-75	Filed transcript of ... proceedings, dated May 15, 1975	
07-21-75	Filed transcrip... ...proceedings, dated May 16, 1975	
07-21-75	Filed transcript of record of proceedings, dated May 29, 1975	
3-75	PHILIP KAYE - Filed amended judgment...The deft is committed for imprisonment for a period of ONE YEAR and ONE DAY and on condition that the deft be confined in a jail type institution for a period of THREE MONTHS, the execution of the remainder of the sentence of imprisonment is suspended and the deft is placed on probation for a period of NINE MONTHS and ONE DAY, subject to the standing probation order of this Court, pursuant to Ti.18, U.S.Code, Section 3651..... Motley, J.....Ent. 7-28-75------	
8-8-75	PHILIP KAYE - Filed memo endorsed on motion filed June 30-75****The court grants the within motion to reduce sentence******Motley, J.....m/n	
8-28-75	SIDNEY STEIN - Filed motion for mitigation of sentence.	
8-28-75 ***	SIDNEY STEIN - Filed memorandum in support of motion for mitigation of sentence.	
9-24-75	NORMAN RUBINSON - Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A.	
9-25-75	SIDNEY STEIN - Filed writ with marshals return..	
10-6-75	EDGAR REYNOLDS - Mailed original CJA copy 1 to A.O. Wash.for payment...Motley,J.	
10-13-75	NORMAN RUBINSON,- Filed opinion #42960****the court concludes that a mistrial as to Levine should not be declared or a judgment of acquittal entered****This is not a case in which the prosecution pursued a course of misconduct or impropriety such as warrants a mistrial***Levine and Rubinson claim that the court should have charged the jury on several rather than one conspiracy**The court does not agree**Haskell's conversation with the juror was brought to the attention of all of the deft's during the trial. None of them chose at that time to challenge the juror***Rubinson cannot now claim such prejudice****Etc.....Motley, J.....notices mailed.....	
8-15-75	Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A.	

DATE	PROCEEDINGS
	/Govts.
8-19-75	LAWRENCE LEVINE - Filed notice of motion for and order modifying the findings of Courts opinion dtd.7-28-75
8-19-75	Filed affdvt.of Frank H.Wohl,AUSA in support of above motion.
8-25-75	Filed affdvt.of Jo Ann Harris,AUSA in support of Govt's motion for modification of certain findings in Court's opinion dated 7-28-75...
8-28-75	SIDNEY STEIN - Filed request for oral argument...
9-4-75	Filed affdvt.of Frank H.Wohl,AUSA in support of Govt's motion seeking modification of opinion dtd. 7-28-75...
9-4-75	Filed affdvt. of Daniel J.Schatz,investigator S.E.C. dtd.9-3-75...
9-10-75	Filed affdvt.of Thomas A.Andrews in response to affdvts of D.Schatz and F.Wohl
9-23-75	L.LEVINE - Filed memo endorsed on motion filed 8-19-75****After hearing this date the Courts opinion is amended on the top of page 19 in the last sentence of the first paragraph****as indicated on the record.....Motley,J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
- v -	:	INDICTMENT
NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, EDGAR REYNOLDS, JEROME HASKELL, LAWRENCE LEVINE, WALTER WAX, PHILIP KAYE, and MICHAEL GARDNER,	:	74 Cr.
Defendants.	:	

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of August, 1968, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, EDGAR REYNOLDS, JEROME HASKELL, LAWRENCE LEVINE, WALTER WAX, PHILIP KAYE, and MICHAEL GARDNER, the defendants herein, and Saul Weitzman, Louis Larry Hochen, Harry Silber, Arthur Kravetz, Yehuda Weiss and B'Noth Jerusalem, named herein as co-conspirators but not as defendants, and other persons to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, violations of the Securities Act of 1933 and the Securities Exchange Act of 1934 (Sections 77e, 77q,

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77x, 78j and 78ff of Title 15, United States Code) and Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission and Sections 1341 and 1343 of Title 18, United States Code.

2. It was a part of said conspiracy that said defendants and co-conspirators unlawfully, wilfully and knowingly would, directly and indirectly, make use of means and instruments of transportation and communication in interstate and foreign commerce and of the mails to sell securities, to wit, common stock of Stern-Haskell, Inc., at a time when no registration statement as to said securities was in effect with the United States Securities and Exchange Commission.

3. It was further a part of said conspiracy that said defendants and co-conspirators unlawfully, wilfully and knowingly in the offer and sale of securities, to wit, common stock of Stern-Haskell, Inc., by the use of means and instruments of transportation and communications in interstate commerce and by use of the mails, would directly and indirectly (a) employ devices, schemes and artifices to defraud; (b) obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engage in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of the common stock of Stern-Haskell, Inc., and upon any and all persons to whom the said defendants and co-conspirators, directly and indirectly, would attempt to sell the aforementioned securities.

4. It was further a part of said conspiracy that said defendants and co-conspirators in connection with the purchase and sale of securities, to wit, common stock of Stern-Haskell, Inc., would, directly and indirectly, use

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means of instrumentalities of interstate commerce and the mails to use and employ manipulative and deceptive devices and contrivances in contravention of Rule 10b-5[17 CFR Section 240. 10b-5] of the Rules and Regulations of the United States Securities and Exchange Commission.

5. It was further a part of said conspiracy that said defendants and co-conspirators, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, unlawfully, wilfully and knowingly, and for the purpose of executing said scheme and artifice and attempting so to do, would place and cause to be placed in post offices and authorized depositories for mail matter, and would cause to be delivered by mail according to the direction thereon, certain matter to be sent and delivered by the United States Postal Service.

6. It was further a part of said conspiracy that said defendants and co-conspirators, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, unlawfully, wilfully and knowingly, would transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals and sounds for the purpose of executing said scheme and artifice.

7. Among the means by which the defendants and co-conspirators would and did carry out the said conspiracy were the following:

(a) Defendants NORMAN RUBINSON, SIDNEY STEIN, WILLIAM CHESTER and JEROME HASKELL arranged for the issuance and distribution of 200,000 shares of the common stock of Stern-Haskell, Inc., without the filing by Stern-Haskell, Inc., of a registration statement, prospectus or certified financial statements with the United States Securities and Exchange Commission.

(b) Defendants NORMAN RUBINSON and WILLIAM CHESTER arranged for Stock Transfer Agency, which they controlled, to act as the transfer agent of Stern-Haskell, Inc.

(c) Defendants NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, EDGAR REYNOLDS and JEROME HASKELL arranged to own or control over 150,000 of said 200,000 shares of the common stock of Stern-Haskell, Inc.

(d) Defendants NORMAN RUBINSON, WILLIAM CHESTER and JEROME HASKELL arranged for the issuance of an additional 350,000 shares of the common stock of Stern-Haskell, Inc., which would be owned or controlled by themselves.

(e) Defendants NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, LAWRENCE LEVINE, WALTER WAX, JEROME HASKELL and MICHAEL GARDNER arranged for the establishment and maintenance of a public market in the common stock of Stern-Haskell, Inc., at artificially inflated, manipulated and fraudulent prices ranging from one dollar per share to over four dollars per share.

(f) Defendants NORMAN RUBINSON, JEROME HASKELL and MICHAEL GARDNER arranged for defendant MICHAEL GARDNER to receive 50,000 shares of the common stock of Stern-Haskell, Inc., at a price of ten cents per share at a time when the market price of said shares was in excess of two dollars per share, in return for the assistance of MICHAEL GARDNER in distributing the common stock of Stern-Haskell, Inc. to the public at artificially inflated, manipulated and fraudulent prices.

(g) Defendants NORMAN RUBINSON, SIDNEY STEIN, and ALBERT FEIFFER made secret cash payments to defendants LAWRENCE LEVINE, PHILIP KAYE and WALTER WAX in return for the distribution by defendants LAWRENCE LEVINE, PHILIP KAYE and WALTER WAX of the common stock of Stern-Haskell, Inc.,

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to the public at artificially inflated, manipulated and fraudulent prices.

(h) Defendants LAWRENCE LEVINE, WALTER WAX and PHILIP KAYE arranged for recommendations to be made to members of the investing public to purchase the common stock of Stern-Haskell, Inc., without disclosing said secret cash payments, or said defendants' activities in connection with the marketing of said securities, or the facts that the prices of said securities were artificially inflated, manipulated and fraudulent, or other facts which would have been disclosed in a prospectus if one had been issued, such undisclosed facts being material facts, necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

(i) Defendants NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, EDGAR REYNOLDS, LAWRENCE LEVINE, PHILIP KAYE, WALTER WAX and MICHAEL GARDNER directly and indirectly sold over 75,000 shares of the common stock of Stern-Haskell, Inc., to the public at artificially inflated, manipulated and fraudulent prices, at a time when no registration statement was in effect as to said securities.

(j) Defendants NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, EDGAR REYNOLDS, JEROME HASKELL, LAWRENCE LEVINE, PHILIP KAYE, WALTER WAX and MICHAEL GARDNER, through the activities described above in this paragraph, would and did cause members of the investing public to lose substantial amounts of money.

OVERT ACTS

In furtherance of said conspiracy, and to effect the objects thereof, the following overt acts were committed within the Southern District of New York and elsewhere:

1. In or about May and June, 1969, defendants NORMAN RUBINSON and SIDNEY STEIN paid a quantity of cash to

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defendant PHILIP KAYE in the vicinity of 360 East 72nd Street, New York, New York.

2. In or about May and June, 1969, defendant LAWRENCE LEVINE received a quantity of cash.

3. In or about May and June, 1969, defendant WALTER WAX received a quantity of cash.

4. On or about June 6, 1969, defendants SIDNEY STEIN, WILLIAM CHESTER and EDGAR REYNOLDS met in the vicinity of 360 East 72nd Street, New York, New York.

5. On or about June 6, 1969, defendant ALBERT FEIFFER endorsed a check from Tessel, Paturick & Ostrau, Inc. in the amount of approximately $11,941.75.

6. On or about June 13, 1969, defendant ALBERT FEIFFER endorsed a check from Tessel, Paturick & Ostrau, Inc. in the amount of approximately $10,264.94.

7. On or about June 9, 1969, defendant LAWRENCE LEVINE made a transaction in the common stock of Stern-Haskell, Inc.

8. On or about June 12, 1969, defendant WALTER WAX recommended the purchase of the common stock of Stern-Haskell, Inc., to a customer.

9. In or about July 1969, defendants NORMAN RUBINSON and JEROME HASKELL met in New York, New York.

10. On or about July 18, 1969, defendant MICHAEL GARDNER received 50,000 shares of the common stock of Stern-Haskell, Inc.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH SIX

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts Two through Six, in the Southern District of New York, NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, JEROME HASKELL, LAWRENCE LEVINE, PHILIP KAYE, WALTER WAX, and MICHAEL GARDNER, the defendants,

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unlawfully, wilfully and knowingly, in the offer and sale of securities, to wit, common stock of Stern-Haskell, Inc., by the use of means and instruments of transportation and communications in interstate commerce and by use of the mails, (a) did employ devices, schemes and artifices to defraud; (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading; and, (c) did engage in transactions, practices and courses of business which would operate and did operate as a fraud and deceit upon purchasers of said securities and other persons whom the defendants and co-conspirators directly and indirectly, attempted to induce to purchase said securities.

2. The allegations contained in paragraph 7 of Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing some of the means by which said defendants committed the offenses charged in Counts Two through Six.

3. On or about the dates hereafter set forth, in Counts Two through Six, among others, in the Southern District of New York and elsewhere, NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, JEROME HASKELL, LAWRENCE LEVINE, PHILIP KAYE, WALTER WAX and MICHAEL GARDNER, the defendants, unlawfully, wilfully, and knowingly did use, and cause to be used, the mails, pursuant to and in furtherance of the scheme alleged in paragraph one of these counts, by causing to be sent through the mails, to the addressees set forth below, the matter set forth below:

COUNT	DATE	ADDRESSEE	MATTER
2	June 6, 1969	ALLAN FEIFFER 360 East 72nd St. New York, New York	Confirmations of sale of 4000 shares of the common stock of Stern-Haskell, Inc.

INDICTMENT

PHW:ale n-445b	3	June 6, 1969	ALBERT FEIFFER 360 East 72nd St. New York, New York	Confirmations of sale of 2000 shares of the common stock of Stern-Haskell, Inc.
	4	June 12, 1969	ALLAN FEIFFER 360 East 72nd St. New York, New York	Confirmation of sale of 2000 shares of the common stock of Stern-Haskell, Inc.
	5	June 12, 1969	ALBERT FEIFFER 360 East 72nd St. New York, New York	Confirmation of sale of 2000 shares of the common stock of Stern-Haskell, Inc.
	6	June 13, 1969	ALLAN FEIFFER 360 East 72nd St. New York, New York	Confirmation of sale of 2000 shares of the common stock of Stern-Haskell, Inc.

(Title 15, United States Code, Sections 77q and 77x and Title 18, United States Code, Section 2).

COUNTS SEVEN AND EIGHT

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts Seven and Eight, in the Southern District of New York, the defendants NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, JEROME HASKELL, LAWRENCE LEVINE, WALTER WAX, PHILIP KAYE, and MICHAEL GARDNER, unlawfully, wilfully and knowingly did, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails, use and employ in connection with the purchase and sale of securities, to wit, common stock of Stern-Haskell, Inc., manipulative, and deceptive devices and contrivances in contravention of Rule 10b-5 [17 CFR Section 240.10b-5] of the rules and regulations of the United States Securities and Exchange Commission.

2. The allegations contained in Paragraph 7 of Count One of

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this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing some of the means by which said defendants committed the offenses charged in Counts Seven and Eight.

3. On or about the dates hereinafter set forth in Counts Seven and Eight in the Southern District of New York, the defendants NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, JEROME HASKELL, LAWRENCE LEVINE, WALTER WAX, PHILIP KAYE, and MICHAEL GARDNER, unlawfully, wilfully, and knowingly did use and cause to be used means and instrumentalities of interstate commerce and the mails pursuant to and in furtherance of the scheme alleged in paragraph 1 of these counts, by sending and causing to be sent to the addressees hereinafter set forth the matter hereinafter set forth:

COUNT	DATE	ADDRESSEE	MATTER
7	June 12, 1969	Lena Dundish 522 Ocean Avenue Brooklyn, New York	Confirmation of the purchase of 200 shares of the common stock of Stern-Haskell, Inc.
8	June 11, 1969	Paul E. Schuchalter and Mrs. Dorothy Schuchalter 30 First Street Suffern, New York	Confirmation of the purchase of 200 shares of the common stock of Stern-Haskell, Inc.

(Title 15, United States Code, Sections 78j and 78ff; and Title 18, United States Code, Section 2; and Title 17, Code of Federal Regulations, Section 240.10b-5.)

COUNTS NINE THROUGH THIRTEEN

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts Nine through Thirteen in the Southern District of New York, defendants NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, JEROME HASKELL, LAWRENCE LEVINE, WALTER WAX, PHILIP KAYE and MICHAEL GARDNER unlawfully, wilfully and knowingly did devise and intend to devise

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12	August 22, 1969	Myron Altschuler 12 Roosevelt Terrace Bayonne, New Jersey	Confirmation of the purchase of 2000 shares of the common stock of Stern-Haskell, Inc.
13	August 25, 1969	B'Noth Jerusalem 157 Hewes Street Brooklyn, New York	Confirmation of the sale of 5000 shares of the common stock of Stern-Haskell, Inc.

(Title 18, United States Code, Sections 1341 and 2.)

COUNT FOURTEEN

The Grand Jury further charges:

On or about June 6, 1969, in the Southern District of New York and elsewhere, defendants NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER and EDGAR REYNOLDS unlawfully, wilfully and knowingly, directly and indirectly, caused to be carried by means and instruments of transportation in interstate commerce from in or about Miami Florida to in or about Brooklyn, New York, for the purpose of sale and delivery after sale, securities, to wit, common stock of Stern-Haskell, Inc., when no registration statement as to such securities was in effect with the United States Securities and Exchange Commission.

(Title 15, United States Code, Sections 77e and 77x; Title 18, United States Code, Section 2.)

COUNTS FIFTEEN THROUGH EIGHTEEN

The Grand Jury further charges:

On or about the dates hereinafter set forth in Counts Fifteen through Eighteen, in the Southern District of New York, defendants NORMAN RUBINSON, ALBERT FEIFFER, SIDNEY STEIN, WILLIAM CHESTER and EDGAR REYNOLDS unlawfully, wilfully and knowingly, directly and indirectly, made use of the mails and caused the mails to be used to sell securities, to wit, common stock of Stern-Haskell, Inc., in that said defendants did cause the mails to be used to send to the addressees hereinafter set forth, the matter hereinafter set forth, when no registration statement as to such securities was in

a scheme to defraud purchasers of the common stock of Stern-Haskell, Inc., and to obtain money and property from said persons by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme and artifice to defraud and attempting so to do, did cause to be placed in post offices and authorized depositories for mail matter and did cause to be delivered by mail, according to the directions thereon, certain matter to be sent and delivered by the United States Postal Service, as more particularly set forth below.

2. The allegations contained in Paragraph 7 of Count One of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which said defendants committed the offenses charged in Counts Nine through Thirteen herein.

3. On or about the dates hereinafter set forth, in Counts Nine through Thirteen, in the Southern District of New York, said defendants unlawfully, wilfully and knowingly did cause to be placed in post offices and authorized depositories for mail, and did cause to be delivered by mail by the United States Postal Service, according to the directions thereon, to the addressees hereinafter set forth, the matter hereinafter set forth:

COUNT	DATE	ADDRESSEE	MATTER
9	June 16, 1969	Prudential 1313 N.E. 125th Street Miami, Florida	Confirmation of the purchase of 150 shares of the common stock of Stern-Haskell, Inc.
10	July 9, 1969	Prudential 1313 N.E. 125th Street Miami, Florida	Confirmation of the purchase of 425 shares of the common stock of Stern-Haskell, Inc.
11	August 21, 1969	Lena Dundiah 522 Ocean Avenue Brooklyn, New York	Confirmation of the purchase of 250 shares of the common stock of Stern-Haskell, Inc.

effect with the United States Securities and Exchange Commission:

COUNT	DATE	ADDRESSEE	MATTER
15	June 19, 1969	B'Noth Jerusalem 157 Hewes Street Brooklyn, New York	Confirmations of the sale of 8000 shares of the common stock of Stern-Haskell, Inc.
16	August 22, 1969	B'Noth Jerusalem 157 Hewes Street Brooklyn, New York	Confirmation of the sale of 13,500 shares of the common stock of Stern-Haskell, Inc.
17	August 25, 1969	Richard M. Warren and Rose M. Warren 2 Watson Avneue North Haven, Connecticut	Confirmation of the purchase of 200 shares of the common stock of Stern-Haskell, Inc.
18	August 28, 1969	Sylvia Lynn Malek and Rochelle B. Malek 1753 Michigan Avenue Miami Beach, Florida	Confirmation of the purchase of 300 shares of the common stock of Stern-Haskell, Inc.

(Title 15, United States Code, Section 77e and Title 18, United States Code, Section 2.)

COUNTS NINETEEN AND TWENTY

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts Nineteen and Twenty, in the Southern District of New York, defendants NORMAN RUBINSON, WILLIAM CHESTER and MICHAEL GARDNER unlawfully, wilfully and knowingly did devise and intend to devise a scheme to defraud recipients of the common stock of Stern-Haskell, Inc., and to obtain money and property from said persons by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing said scheme and artifice to defraud and attempting so to do, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce signs, signals and sounds, as more particularly set forth below.

2. The allegations contained in Paragraph 7 of

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Count One of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which said defendants committed the offenses charged in Counts Nineteen and Twenty.

3. On or about the dates hereinafter set forth in Counts Nineteen and Twenty in the Southern District of New York, said defendants unlawfully, wilfully and knowingly did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce signs, signals and sounds between the parties hereinafter set forth:

COUNT	DATE	PARTIES
19	July 24, 1969	Bernard H. LaLone New York, New York and John Carroll, Montreal, Canada.
20	December 30, 1969	Defendant MICHAEL GARDNER, New York, New York and John Carroll, Montreal, Canada.

(Title 18, United States Code, Sections 1343 and 2.)

Paul J. Curran

FOREMAN

PAUL J. CURRAN
United States Attorney

(JUDGE MOTLEY (

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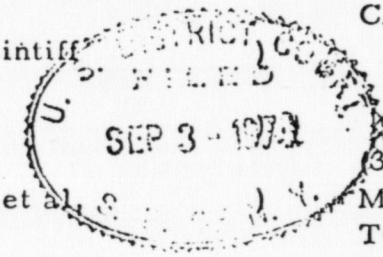
MOTION OF CHESTER

SOUTHERN DISTRICT COURT
OF NEW YORK

UNITED STATES OF AMERICA,)

Plaintiff)

CASE NO. 74-CR-573-CBM



vs.

NORMAN RUBINSON, et al,)

Defendants)

(3)

MOTION OF WILLIAM K. CHESTER TO APPOINT A DEFENSE ATTORNEY TO REPRESENT HIM AT THE JURY TRIAL

.....

COMES NOW William K. Chester and moves this court to appoint a defense attorney to represent him at the jury trial, if the same is held, and for reasons give:

1. The Movant has no assets other than a $10,000 equity in his home as located at 955 N. E. 80 Street, Miami, Florida.

2. That the Movant is a salaried employee with an annual income of $25,000, with a net weekly pay in the amount of $325.

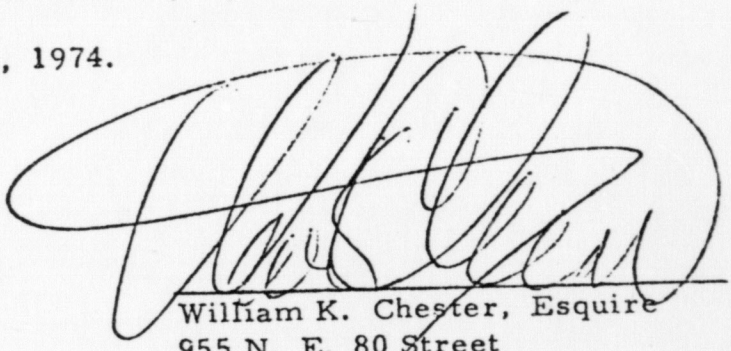
3. That all defense attorneys questioned by the Movant desire at least a $10,000 retainer and are of the opinion that if this case is tried counsel's fee charge to the Movant would be at least $50,000.

4. That this type of securities case is highly complicated and 90% of the trial lawyers do not have the experience, knowledge or ability to defend properly a defendant.

5. That the Movant should not be penalized by not appointing him a defense counsel because of his employment, when his employment does not give him the necessary financial ability to pay a defense counsel.

6. Attached hereto is a Memorandum of Law supporting this Motion to Appoint a Defense Attorney.

I HEREBY CERTIFY that a true copy of the foregoing Motion to Appoint a Defense Attorney was mailed to Frank H. Wohl, Assistant United States Attorney, United States District Court, Foley Square, New York City, New York, this 30th day of August, 1974.



William K. Chester, Esquire
955 N. E. 80 Street
Miami, Florida 33138

28a MEMORANDUM OF LAW

MOTION OF CHESTER

Rule 44 of the Rules of Criminal Procedure sets forth "If the defendant appears in court without counsel, the court shall advise him of his right to counsel and assign counsel to represent him at every stage of the proceedings unless he elects to proceed without counsel or is able to obtain counsel."

The most recent case is set forth in Argersinger vs. Hamlin, 407 U.S. 25 in which the Supreme Court held that, "Absent a knowing and intelligent waiver no person may be imprisoned for any offense whether classified as petty, misdemeanor or felony unless he was represented by counsel at the trial."

FJM:ka

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA :

-v- : BILL OF PARTICULARS

NORMAN ROBINSON, et al., : 74 Cr. 573 (CRH)

Defendants.:

- - - - - - - - - - - - - - - - - - x

The United States of America, for its bill of particulars, alleges as follows:

1. The activities described in subparagraph 7(a) of Count One of the indictment occurred between on or about November 1, 1968 and on or about November 1, 1969 in the vicinity of Miami, Florida and in the vicinity of New York, New York.

2. The activities described in subparagraph 7(b) of Count One of the indictment occurred between on or about August 1, 1968 and on or about June 1, 1970 in the vicinity of Miami, Florida.

3. The activities described in subparagraph 7(c) of Count One of the indictment occurred between on or about December 1, 1968 and on or about May 1, 1969 in the vicinity of New York, New York.

4. The activities described in subparagraph 7(d) of Count One of the indictment occurred on or about May 1, 1969 in the vicinity of Miami, Florida and in the vicinity of New York, New York.

FJW:ka

5. The activities described in subparagraph 7(e) of Count One of the indictment occurred between on or about April 1, 1969 and on or about November 1, 1969 in the vicinity of New York, New York.

6. The activities described in subparagraph 7(f) of Count One of the indictment occurred between on or about April 1, 1969 and on or about August 1, 1969 in the vicinity of Miami, Florida and in the vicinity of New York, New York.

7. The activities described in subparagraph 7(g) of Count One of the indictment occurred between on or about April 1, 1969 and on or about December 1, 1969 in the vicinity of New York, New York.

8. The activities described in subparagraph 7(h) of Count One of the indictment occurred between on or about April 10, 1969 and on or about September 1, 1969 in the vicinity of New York, New York.

9. The activities described in subparagraph 7(i) of Count One of the indictment occurred in the vicinities of Miami, Florida, Ft. Lauderdale, Florida, Melbourne, Florida, and New York, New York between on or about April 10, 1969 and on or about December 1, 1969.

10. The activities described in subparagraph 7(j) of Count One of the indictment occurred whenever the common stock of Stern-Haskell, Inc. was sold between on or about April 10, 1969 and on or about September 1, 1969.

FHN:mm

11. The activities described in Overt Acts One through Three of Count One of the indictment occurred in the vicinity of 360 East 72nd Street, New York, New York and in the vicinity of 55 Liberty Street, New York, New York on several dates, unknown to the Government, during the months alleged in Overt Acts One through Three. The payments were in cash, in amounts unknown to the Government, except that said amounts were calculated by a formula based on the numbers of shares of the common stock of Stern-Haskell, Inc. purchased and sold by the defendants.

12. Co-conspirators not named in the indictment are Frances Schick, Andrew McKay, Sten Nordin, Betty Fletcher, Stock Transfer Agency, Richard Stern, Marinua Laboratories, Ben Malmeth and Edwin French.

13. The untrue statements and omissions alleged in paragraph one of Counts Two through Six consist of the failure by the defendants and each of them to disclose the facts which would have been disclosed in a true and valid prospectus, if one had been issued, including but not limited to defendants' activities in connection with purchases, sales, issuance and distribution of the common stock of Stern-Haskell, Inc., and that the prices of said securities were artifically inflated, manipulated and fraudulent, and that secret cash and stock payments and profits were made in connection with transactions in said securities, and that some sellers or buyers of said securities were acting as nominees or agents of other persons.

FIEW:cm

14. Defendants are hereby notified that the United States expects to prove some of defendants' activities concerning the common stock of Toy King, Inc., National Ventures, Inc., Diston Industries, Inc., Mobil Home Ventures, Inc., Allen Electronics, Inc., Calculator Computer Leasing Corp., David Auld, Inc., and Newport Chemical and related companies as part of the conspiracy charged in Count One and as acts similar to the crimes charged as bearing on defendants' knowledge, intent and wilfullness.

Dated: New York, New York

December 7, 1974

Yours etc.,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: S/
FRANK H. WOHL
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Telephone: (212) 791-1939

MWika

33a BILL OF PARTICULARS

TO:

NORMAN RUBINSON
20 Hibiscus Island
Miami Beach, Florida

MORTON ROBSON, ESQ.
Zissu, Lore, Halper & Robson, Esqs.
450 Park Avenue
New York, N. Y. 10022

WILLIAM K. CHESTER, ESQ.
955 N. E. 80th Street
Miami, Florida 33138

McCOYD & KEEGAN, ESQS.
114 Old Country Road
Mineola, New York 11501

EMANUEL TREBNER, ESQ.
369 Lexington Avenue
New York, N. Y. 10017

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
330 Madison Avenue
New York, New York

MORTON BERGER, ESQ.
54 Durham Road
White Plains, New York 10607

FHW:ilf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	SUPPLEMENTAL BILL OF PARTICULARS
-v-	:	
NORMAN RUBINSON, et al.,	:	74 Cr. 573 (CBM)
Defendants.	:	

The United States of America supplements its bill of particulars herein as follows:

1. The payments referred to in paragraph 11 of the Bill of Particulars were from defendants Rubinson, Feiffer and Stein to defendants Levine and Wax. On at least one occasion one of said payments was delivered to defendants Levine and Wax by defendant Kaye.

2. Defendants Levine and Wax made payments in cash to defendant Kaye.

3. In addition to the cash payments referred to above, defendant Levine received approximately 5,000 shares of the common stock of Stern-Haskell, Inc., as partial payment for his activities as alleged in the indictment.

Dated: New York, New York
January 2, 1975

Yours, etc.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: [signature]
FRANK H. WOHL
Assistant United States Attorney
Office and Post Office Address:
United States Courth ouse
Foley Square
New York, New York 10007
Telephone: (212) 791-1939

JUDGE MOTLEY.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
DEC 17 1974
S. D. OF N. Y.

UNITED STATES OF AMERICA, :

-against- : 74 Cr. 573

NORMAN RUBINSON, et al., : motley J

Defendants. :

June 17, 1974
10: 45 a.m.

Before: Hon. Whitman Knapp, District Judge.

Appearances:

Paul J. Curran, Esq.
United States Attorney for the
Southern District of New York
Frank Wohl, Esq., Assistant
United States Attorney.

Emanuel Thebner, Esq.
Attorney for Defendant Jerome Haskell.

Morton Berger, Esq.
Attorney for Defendant Michael Gardner.

Morton Robson, Esq.
Attorney for Defendant Albert Feiffer.

J. W. Kaufman, Esq.
Attorney for Defendant Lawrence Levine.

Charles Stillman, Esq.
Attorney for Defendant Philip Kaye.

Sol M. Stending, Esq.
Attorney for Defendant Walter Wax.

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(Case called)

MR. WOHL: Frank Wohl, United States Attorney's Office, your Honor, for the Government.

This is a multi-count conspiracy securities fraud indictment. Copies of the indictment have been furnished to the defendants and their counsel.

I believe we have 8 of the defendants here at this time, your Honor.

The defendant William Chester is coming from Florida. He called Friday and we agreed to ask the Court to put his pleading and bail situation on for the second call.

The defendant Stein has asked that the pleading in his case be adjourned for one week, and the Government has consented to that.

The 8 other defendants are here at this time and are prepared to enter their pleas.

THE COURT: Are they all represented by counsel?

DEFENDANT RUBINSON: My name is Norman Rubinson, your Honor. I --

THE COURT: You are not represented by counsel, Mr. Rubinson?

DEFENDANT RUBINSON: My counsel called Mr. Wohl

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and said he has another matter pending in Florida. Mr. Wohl said that I should come up myself.

THE COURT: Who is your counsel?

DEFENDANT RUBINSON: Frank Freeman.

THE COURT: What about the others?

DEFENDANT REYNOLDS: I don't have any counsel.

THE COURT: You have not obtained counsel?

DEFENDANT REYNOLDS: I don't have the -- I don't have the money to get counsel.

THE COURT: You want counsel assigned to you?

DEFENDANT REYNOLDS: I would like to, yes, sir.

MR. WOHL: I think, your Honor, I have, as a result of our investigation, some passing familiarity with Mr. Reynolds' financial condition. Although I don't know the details of it, I have some doubt as to whether he would qualify for assigned counsel.

THE COURT: That would be referred to a magistrate to determine.

Everybody else here is represented by counsel; is that right?

MR. THEBNER: I represent the defendant Jerome Haskell.

THE COURT: All other counsel please put their appearances in.

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MR. BERGER: Morton Berger representing defendant Michael Gardner.

MR. ROBSON: Morton Robson representing Albert Feiffer.

MR. KAUFMAN: J. W. Kaufman representing Lawrence Levine.

MR. STILLMAN: Charles Stillman representing Philip Kaye.

MR. STENDING: Sol M. Stending representing Walter Wax.

THE COURT: With respect to the defendants who are represented by counsel, how do you plead?

MR. THEBNER: Defendant Haskell pleads not guilty to the 13 counts wherein he is mentioned.

MR. ROBSON: Defendant Feiffer pleads not guilty, your Honor.

MR. KAUFMAN: Lawrence Levine pleads not guilty to each and every count of the indictment in which he is mentioned.

MR. BERGER: Defendant Michael Gardner pleads not guilty to each of the counts of the indictment where he is mentioned.

MR. STENDING: Defendant Walter Wax pleads not guilty to the counts of the indictment where he is

Gg 5

mentioned.

MR. STILLMAN: Philip Kaye pleads not guilty, your Honor.

THE COURT: I take it you all have copies of the indictment.

(Pause)

THE COURT: I take it you all waive the reading of the indictment.

The defendants who are not represented by counsel, do they?

DEFENDANT RUBINSON: I plead not guilty, your Honor.

DEFENDANT REYNOLDS: I plead not guilty, your Honor.

THE COURT: Mr. Reynolds is the only one that asks that counsel be assigned. That would be referred to the magistrate for purposes of looking into your eligibility and if your are eligible for assigned counsel.

What application do you have on the question of bail?

MR. WOHL: For bail, your Honor, the government requests that each of the defendants sign a $20,000 personal recognizance bond.

THE COURT: Without deposit?

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MR. WOHL: Yes, your Honor.

MR. STILLMAN: I think I am last on the list, your Honor. My client is presently under two personal recognizance bonds.

I would ask that insofar as this indictment is concerned, that he be released.

THE COURT: What difference does it make? If he shows up, it doesn't cost him anything. If he doesn't show up, why shouldn't he pay?

MR. STILLMAN: Probably not, your Honor, other than the tedium to go to the courthouse and get it signed.

THE COURT: We all have to put up with tedium. The Government's application is granted.

THE CLERK: The case is assigned to Judge Motley.

MR. WOHL: We ask that the defendants be photographed and fingerprinted.

THE COURT: So ordered if it hasn't been done.

Mr. Reynolds, a not guilty plea is entered on your behalf and you are to go to the magistrate.

MR. BERGER: May it please the Court, will the Court be advising us of how many days we have to make our motions?

THE COURT: The rules provide that you have

ten days. If that is not enough, you make your application before Judge Motley.

MR. WOHL: Could we have Mr. Reynolds photographed and fingerprinted before he goes down to see about assignment of counsel, your Honor?

THE COURT: Yes.

All right, gentlemen.

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JUDGE MOTLEY

HEARING TRANSCRIPT-6/27/74

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U.S. DISTRICT COURT
FILED
OCT 18 1974
S. D. OF N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v s -

NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, EDGAR REYNOLDS, JEROME HASKELL, LAWRENCE LEVINE, WALTER WAX, PHILIP KAY and MICHAEL GARDNER,

Defendants.

74 Cr. 573 (CBM)

B e f o r e :

HON. CONSTANCE BAKER MOTLEY,
District Judge.

New York, N. Y.
27 June 1974 - 4:00 p.m.

A p p e a r a n c e s ;

PAUL J. CURRAN, ESQ., United States Attorney for the Southern District of New York,
By: FRANK H. WOHL, Assistant United States Attorney.

J. W. KAUFMANN, ESQ.,
Attorney for Defendant Levine.

STANLEY KLIEGFELD, ESQ.,
Attorney for Defendants Wax and Chester.

MORTON S. ROBESON, ESQ.,
Attorney for Defendants Feiffer and Reynolds.

NORMAN RUBINSON,
Pro Se.

ERIC G. WEIKA, ESQ.,
Attorney for Defendant Gardner.

BENJAMIN SELLERMYER, ESQ.,
Attorney for Defendant Kaye.

[In open court.]

THE COURT: First, gentlemen, I would like to make sure that each defendant here is represented by some counsel so we don't have to go through this again.

Norman Rubinson is represented by whom?

MR. RUBINSON: By myself, your Honor.

THE COURT: Sidney Stein?

MR. WOHL: I don't see Mr. Stein's counsel here. I believe I received a telephone call today from Neil Sonnett, an attorney in Miami, Florida, who stated that he had received timely notice of the conference and had anticipated being here, but that he also had a sentencing on in Florida today which he had anticipated would be adjourned in light of your Honor's calling this conference. He told me over the telephone that it was not adjourned, that the judge refused to adjourn it, and he would communicate with your Honor's chambers with respect to why he was not here today.

He did say to me that he and his client would be prepared to follow whatever schedule your Honor fixed.

THE COURT: All right.

Albert Feiffer?

MR. ROBESON: I represent Mr. Feiffer, your Honor.

THE COURT: William Chester?

MR. KLIEGFELD: Stanley Kliegfeld. At the request of Mr. Chester, and for the purposes of this hearing only, I am authorized to appear for him and to communicate to him and regard him as binding with respect to any decision we may make here today.

THE COURT: Have you appeared before me previously, Mr. Kliegfeld?

MR. KLIEGFELD: Not in this matter, your Honor.

THE COURT: In any matter?

MR. KLIEGFELD: Yes, I have. Manor Nursing, other cases.

THE COURT: I was wondering why you looked familiar.

Edgar Reynolds?

MR. ROBESON: Mr. Reynolds is represented by David Kegan, who is assigned counsel. He is out of town and requested that I act on his behalf for purposes of this proceeding.

THE COURT: All right. Jerome Haskell? Is Mr. Haskell represented by anyone?

MR. WOHL: The attorney, Emanuel Thebner, appeared on behalf of Mr. Haskell at the arraignment, your Honor, and he was notified of this conference by my letter.

THE COURT: Lawrence Levine?

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MR. KAUFMANN: J. Kaufmann, your Honor.

THE COURT: Walter Wax?

MR. KLIEGFELD: Stanley Kliegfeld, your Honor.

THE COURT: Philip Kaye?

MR. SELLERMYER: My partner, Charles Stillman, your Honor.

THE COURT: Michael Gardner?

MR. WEIKA: Due to a previous commitment, Mr. Gardner is in New Orleans.

THE COURT: What we want to do is set a trial date.

MR. RUBINSON: Your Honor, I don't have an attorney and I am going to be incarcerated on August 5th for six months. I wanted to handle this particular case myself for certain reasons.

You have another case before you, a civil case, which involves some of the defendants or most of the defendants in this case as witnesses. That is 70 Civil 4037. That's Weitzman, who is a co-conspirator, a main line witness in this case, is suing for half a million dollars Stein, Feiffer and Rubinson, myself being Rubinson.

They have taken depositions in this case and are still taking depositions in the civil matter which pertains to this criminal matter as to their interrogations.

Any findings that they are doing in the civil matter before your Court is going to be used in this criminal matter. I'm sure Mr. Wohl knows about it. There are tapes in this case --

MR. WOHL: That is not true, your Honor.

THE COURT: They are not taking depositions?

MR. WOHL: I know nothing about the civil matter, and Mr. Rubinson's statement that I know about the civil matter and intend to use the fruits of the civil matter in this criminal prosecution is not true. The Government regards that civil case as an entirely separate matter that may have overlapping facts, but certainly the Government is not a party to that civil case and is not intending to use any of the fruits of it or participate in the civil case in any way.

THE COURT: I see. Well, I will have to check into the status of that civil matter.

MR. RUBINSON: I have interrogations here which is specifically about National Venture, Jerome Haskell.

THE COURT: We may have stayed depositions. It sounds vaguely familiar to me. I don't recall it, however.

MR. RUBINSON: I just received a deposition notice wanting me to appear on the 16th of August to

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answer the interrogatories. Also in --

THE COURT: The only thing I can say is I will look into it.

MR. RUBINSON: I won't be here, your Honor.

THE COURT: I will look into it if the civil matter is before me. I can check into it and see what is happening there. It sounds like we may have a motion regarding those depositions. It sounds familiar.

MR. WOHL: May I just say one other thing to make the record clear? What I am saying is that the Government is not participating in the civil case. I don't intend to waive any rights that the Government may have as to what may happen in the civil case. The law is what the law is on it.

THE COURT: In fact, we may have that civil trial set for trial soon.

THE CLERK: August, your Honor.

THE COURT: Apparently that's an old civil case. I don't have the civil number here.

MR. RUBINSON: I have it. 70 Civil 4037.

THE COURT: Well, I'll have to check on the status of that. Right now we are going to set it for next January, which will be the earliest that I will be able to reach it.

Do you have a January calendar, Mr. Clerk?

THE CLERK: No, your Honor, but in the back of the book I think there is a calendar.

MR. RUBINSON: Your Honor, may I say one more thing that these attorneys I don't think are appraised of, and that is there is a tape in this case. It stems from the Radio Hill case where we were civially enjoined by Judge Mansfield. I ask that tape be produced because I believe that tape has relevance to our innocence in this case. If the Government does not wish to use the tape, I would like to hear that tape because there is such a tape.

THE COURT: We are not going to take up motions at this time.

MR. RUBINSON: Well, I'm not going to be here. I am going to be incarcerated. That is what I was going to be asking you, whether it would be possible, being I'm doing my own defense in this case, for reasons that my attorney can't be reached because he is in Europe. He didn't come to my arraignment and to this hearing.

THE COURT: You have an attorney?

MR. RUBINSON: I did have one but we can't find him now because the Government tried to reach him and they called me at my home and called me to appear myself

because they couldn't get my attorney.

THE COURT: How long will he be in Europe?

MR. RUBINSON: I have no idea. I don't want to use him in any event because I am more familiar with this case than anybody is. I think I have a very good defense. I would like my sentence stayed until the outcome of this case. I have a six-month sentence, and this will give me time to prepare myself.

THE COURT: I don't know anything about the other sentence and I could not stay it. You have to go before the judge.

MR. RUBINSON: I have a copy here.

THE COURT: You have to go before that judge and get him to stay your sentence. I don't know whether he would have the power to do it, but you take that up with him.

The trial now is set for Tuesday, January 14th, 1975, ten o'clock.

Does anybody have a 1975 calendar?

MR. SELLERMYER: I do, your Honor.

[Pause.]

THE COURT: January 14th, ten o'clock.

Now, all parties will have until September 1st to file motions, and those motions will be heard at a

time set by the Court after the motions have been received. But you have until September 1st to file any motions in this case.

Now, any motion filed in this case is going to have to be supported by a brief. No motion will be considered unless it is supported by a brief citing points and authorities in support of your proposition, whatever it is.

Then, as I said, I will set a date sometime thereafter in late September, early October when they will be heard, if it is necessary for any motions to be heard.

In the interim, please get together with the Government and try to resolve any bill of particulars or any discovery motions that you might have. Also anything that cannot be agreed upon, reduce it to writing and put it in the form of a motion. But your first obligation is to meet with the Government's attorney and see what he is willing to produce or what matters he is willing to make more specific in a bill of particulars so we don't have to wangle about it.

Once that is cleared up you have until September 1st, as I said. And anything that is not agreed upon we will hear that in the form of a motion. If there are

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any other motions, that will be, as I said, filed by September 1st. The trial will be January 14th, 1975, at ten o'clock.

Thank you, gentlemen.

MR. RUBINSON: Your Honor, may I ask you to direct the U. S. Attorney, if I'm incarcerated, to come visit me so we can discuss any motions that may have to be discussed?

THE COURT: I don't know what is funny.

MR. WOHL: The Government would submit, your Honor, if Mr. Rubinson wants to initiate any discussions of that sort, he can do so through correspondence.

MR. RUBINSON: I don't think so, your Honor, because I would like to argue this myself. There are tapes, I know there are tapes. They have been admitted in court.

THE COURT: What is your name, sir?

MR. RUBINSON: My name is Rubinson.

THE COURT: You have a right to represent yourself, but I strongly urge you to get a lawyer. It seems to me like a very complicated case, and if you haven't had any legal training or experience, you are going to be in great difficulty.

MR. RUBINSON: I understand that, your Honor,

because there are Security and Exchange Commission's --

THE COURT: And I cannot act as your counsel.

MR. RUBINSON: Like I say, I'm going to be incarcerated and I'm sure you can direct him wherever I am going to be so we can take it up in an intelligent manner.

THE COURT: I don't have any authority to do that, I don't believe.

MR. WOHL: So the record is clear on this point, I think I should reflect the fact that through the grand jury investigation of this matter, Mr. Rubinson has been represented by Mr. Frank Freeman, at attorney in Miami, Florida, who has appeared in my office on at least two occasions on behalf of Mr. Rubinson; has also made numerous phone calls on behalf of Mr. Rubinson, and has represented to me that he expects to represent Mr. Rubinson in this particular matter. But I just wanted to make it clear that we are not dealing here with a defendant who has never had any counsel in this matter.

THE COURT: All right, thank you, gentlemen.

MR. KLIEGFELD: May I be heard before we adjourn? There is one item of housekeeping. I would like the United States Attorney to make available, both to myself and to any other counsel who may be interested, the plan

which was adopted in the Southern District of New York for the selection of grand juries and petit juries, as well as any amendments to the plan, together with any reports that may have been filed by the Clerk of this Court with the Justice Department in Washington respecting implementation of the plan.

THE COURT: I would think that would be available in the Clerk's Office. The plan of jury selection for this Court is filed with the Clerk.

Thank you, gentlemen.

* * *

merf 54a HEARING TRANSCRIPT-12/5-6/74

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : 74 Cr. 573

NORMAN RUBINSON, et al., :

Defendants. :

----------x

BEFORE:

HON. CONSTANCE B. MOTLEY,

District Judge

New York, New York
December 5, 1974 - 4:00 p.m.

APPEARANCES:

PAUL J. CURRAN,
UNITED STATES DISTRICT ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
BY: FRANK WOHL, ESQ.,
Assistant United States Attorney

MORTON ROBSON, ESQ.,
Attorney for Defendant Feiffer

DAVID KEEGAN, ESQ.,
Attorney for Defendant Reynolds

EMANUEL THEBNER, ESQ.,
Attorney for Defendant Haskell

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.,
Attorneys for Defendants Wax and Levine
BY: MILTON GOULD, ESQ.,
THOMAS A. ANDREWS, ESQ.,
Of Counsel.

MORTON BERGER, ESQ.,
Attorney for Defendant Levine.

- - -

MR. WOHL: The Government is ready.

MR. GOULD: Defendants are ready.

THE COURT: Who represents Defendant Norman Rubinson?

MR. RUBINSON: Your Honor, when I was here the last time, I explained that I was going to be incarcerated in England Air Force Base in Florida, and I am still at a halfway house in Miami, Florida and at that time I didn't have anybody representing me.

I want to petition the Court now for the Court to appoint a lawyer to represent me. I have to spend three more months at the halfway house in Florida.

THE COURT: What is your occupation, Mr. Rubinson?

MR. RUBINSON: Well, right now I am in the halfway house.

THE COURT: Other than that.

MR. RUBINSON: Travel agency.

THE COURT: Travel agency? Where is it located?

MR. RUBINSON: In Miami, I work putting charters together.

THE COURT: How long did you operate the agency?

MR. RUBINSON: Well, that was only a short time before I was incarcerated and then I had to close it down and then I just started to get into it again and I am in the halfway house now about a month.

THE COURT: What did you do before you operated the travel agency.

MR. RUBINSON: I was in the appliance business and I had some other companies.

THE COURT: How long were you in the appliance business?

MR. RUBINSON: Well, actually that was my original trade, from 1943.

THE COURT: Until when?

MR. RUBINSON: Until 1969.

THE COURT: Do you have any income from any business at this time?

MR. RUBINSON: No. In fact I have to find the $10,000 on this past case that the Government, I am paying them at the rate of $575 to $600 a month to pay the fine while my 18 months probation is on. I am on probation now

and part of the probation is spent at halfway house, but I have 18 months, I pay them $575 each month.

THE COURT: On a $10,000 fine?

MR. RUBINSON: That is correct.

THE COURT: Well, in other words for the Court to appoint a lawyer to represent you in this proceeding, it would have to appear that you are without funds. That's the purpose of these questions.

Now, do you have any income from which that $500 a month is being paid?

MR. RUBINSON: Not right now. That's being paid through borrowings of my son who helps me out.

THE COURT: Do you own any real property?

MR. RUBINSON: No ma'am.

THE COURT: Where do live, 22 North Hibiscus Drive? Is that in Florida?

MR. RUBINSON: Yes, ma'am.

THE COURT: Miami.

MR. RUBINSON: Yes, Miami.

THE COURT: Do you have a wife?

MR. RUBINSON: Yes, I do.

THE COURT: Any children?

MR. RUBINSON: Yes.

THE COURT: How many?

MR. RUBINSON: Two.

THE COURT: How old are they?

MR. RUBINSON: One is 28 and my daughter is 22.

THE COURT: Do they live at home with you?

MR. RUBINSON: No, my son is married and has children, and my daughter lives at home with me, yes.

THE COURT: Does your wife work?

MR. RUBINSON: No, ma'am.

THE COURT: Do you want to call Mr. Mogel of Legal Aid Society if he is there?

MR. WOHL: Your Honor, it is the Government's position that in order for Mr. Rubinson to qualify, he would have to make the relevant financial showing under oath.

THE COURT: Well, the Legal Aid Society attorney knows that, and that is a written form. When Mr. Mogel comes up we can have him fill it out.

MR. WOHL: We would also appreciate that the ownership of this house that Mr. Rubinson lives in could be established. The Government's understanding is that Mr. Rubinson lives in a style that would suggest that he is far from impecunious.

THE COURT: I think I asked him if he owns any real estate. Do you want to read the record?

MR. WOHL: Yes, you did, your Honor. The question

that arises is who owns this house that he lives in.

MR. RUBINSON: I am waiting for you to direct me to answer that. If you want me to answer, I will tell you.

MR. WOHL: Also the question of bank accounts. Mr. Rubinson is a man who has traveled to Europe a good deal, has had a number of financial enterprises, was at one time the head of a publicly held company, and there have been suggestions from time to time that he may have foreign bank accounts.

The Government would submit that all of that material should be established under oath.

THE COURT: Well, as I have indicated the Legal Aid Society lawyers have Government forms which are filled out by the persons whom they represent attesting to their indigency. That's under oath. So, Mr. Mogel will come up.

Do we have some other defendant that is not represented by counsel? You may be seated, Mr. Rubinson.

MR. CHESTER: Your Honor, I think I am the only other one, William K. Chester. I am an attorney. At the present time I make $25,000 a year as a corporate counsel in Miami.

However, as soon as I have to come to trial here, they haven't heard about this, I will be dismissed, and at that time I will have no income. So, up until now, of course

I had represented myself, but it is very difficult to take the stand without being represented by an attorney, and ask yourself questions and so forth and so on. I would like to have an attorney appointed for me for the trial because once I am dismissed from this job, I have no money. I live from week to week. I have a small house in Miami, which is totally mortgaged, probably an equity of $10,000 and that's the only thing I have.

THE COURT: All right, well, I will appoint a lawyer also to represent you, and as I pointed out with respect to Mr. Rubinson, in order to have counsel appointed for you under the Criminal Justice Act, you are going to have to fill out an affidavit of indigency.

I should also point out that the statute provides that if it should later appear that you do in fact have money with which to appoint an attorney, you will be required to pay the lawyer. Do you understand that?

MR. CHESTER: Yes.

THE COURT: Do you understand that, Mr. Rubinson?

MR. RUBINSON: Yes, ma'am.

MR. WOHL: Your Honor, while we are waiting, we have already filed answering papers concerning the several defendants' motion to dismiss relating to preindictment delay. I have, however, prepared a supplementary affidavit

which deals solely with the collateral issue that was raised on that. I have served it on the defense counsel just now and I request permission to hand that up.

THE COURT: A supplemental affidavit?

MR. WOHL: Yes, your Honor. It annexes -- basically what happened was in the Defendants' Wax and Levine's motion papers they included a portion of testimony from a civil trial related to Stern-Haskell, which is the same stock that we are involved with here.

I have merely prepared a supplementary affidavit to which is annexed all of the testimony of that witness rather than a portion of it, and also the testimony of another witness at the civil trial that we believe bears on this collateral issue that the Court may be interested in.

THE COURT: All right. You may hand it up.

(Pause.)

THE COURT: All right, gentlemen, Mr. Greenberg of Legal Aid Society is here, and I am going to appoint him to represent Mr. Norman Rubinson.

Now, Mr. Greenberg, would you have Mr. Rubinson fill out an affidavit of indigency with respect to your appointment of him in this case?

MR. GREENBERG: Your Honor, while normally we wouldn't reject, so to speak, any appointments, but I

think our office would be unable to handle this trial due to its length and the fact that I think three of our other attorneys are involved, one in a very lengthy stock fraud case before Judge Bonsal.

Our office I think would be physically unable to accept the assignment in this case.

THE COURT: All right, thank you.

* * *

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Now, Mr. Rubinson, Mr. Steel, Mr. Louis Steel, has come into the courtroom and the Court is going to appoint him to represent you in this case.

THE COURT: Now, Mr. Steel, the Court requires that this defendant fill out an affidavit of indigency, since you are being appointed to represent him under the Criminal Justice Act on his representation that he is without funds with which to employ counsel.

Now, there is a form that you can probably get from the clerk's office. But that should be gone into with the defendant in great detail. I have also advised the defendant that if it should later appear that he does in fact have the funds with which to pay counsel, under the Criminal Justice Act, he is going to be required to pay you. So you proceed now to talk to him and see if you can get that form filled out and get you on the road to representing him.

MR. STEEL: I take it the clerk's office is probably closed now.

THE COURT: Do you have any of those forms here, Mr. Clerk?

THE CLERK: No, your Honor.

THE COURT: Suppose you do it then tomorrow morning.

MR. RUBINSON: Your Honor, I only have permission to stay in New York until today. You see, I am still on probation, I am not allowed to travel. Under my probation and my previous sentencing from the halfway house I am not allowed to go further north than Daytona Beach, Florida, and I had to call the probation officer and get permission to come here.

THE COURT: Well, you call him and tell him that I said that you would stay over and talk to your lawyer tomorrow morning.

MR. RUBINSON: All right.

THE COURT: The problem is, you should have notified the Court before now.

Did we have this matter on earlier in any event, Mr. Wohl?

MR. RUBINSON: November 15th, your Honor.

THE COURT: Did you have a lawyer at that time?

MR. RUBINSON: No, on November 15th the Government postponed the case. I was ready to come and --

THE COURT: You weren't here, is that it?

MR. RUBINSON: No, I was ready to come when Mr. Schatz called me on November 15th, a half a day, and told me it was postponed and then they sent me a notice that it was postponed and then I got the 18th.

THE COURT: Well, the Court should have been notified somehow long before now that you were not represented by counsel. This indictment has been filed since June 4th.

MR. RUBINSON: I was incarcerated in Egland Air Force Base and I asked for contact with the U. S. Attorney, with the Assistant, and he never made contact, never sent me pages, never did anything.

MR. WOHL: I think, your Honor, we had a pretrial conference in October. At that time Mr. Rubinson said that he intended to represent himself in this case. And that's the only other time he has appeared.

THE COURT: Was that before me?

MR. WOHL: Yes, your Honor.

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THE COURT: Is that what occurred, Mr. Rubinson? Did you advise me in October that you would represent yourself?

MR.RUBINSON: That is correct, your Honor. I said at that time that I was -- that it was before October, your Honor, because on October 5th -- no, no, it couldn't be in October,I was incarcerated in October.

It had to be before August 5th. Because I left.

THE COURT: That you appeared here?

MR. RUBINSON: Yes, ma'am.

THE COURT: And I asked you whether you were represented by counsel?

MR. RUBINSON: And I said at this time I am being incarcerated on August 5th so for the present time I will represent myself and I asked at that time for the Court to direct Mr. Wohl to keep in contact with me, and the Court said you would look into the situation and into that particular matter, whether you could direct him to keep in contact with me.

THE COURT: Did we take up the matter of your counsel at that time?

MR. RUBINSON: You asked me whether I have counsel and I did say that I was going to represent myself because I was being incarcerated.

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THE COURT: Did I advise you that the Court would appoint a lawyer for you if you didn't have the money with which to employ one?

MR. RUBINSON: I don't believe -- I don't remember whether you did or not, your Honor. I don't remember. Maybe Mr. Wohl can remember that.

THE COURT: Did you have a transcript of that proceeding?

MR. WHOL: We have it, yes, your Honor. I don't have it here right now.

THE COURT: Well, all right, suppose you consult with this client, Mr. Steel. You see, the problem is, Mr. Rubinson, six months have gone by here. You apparently led the Court to believe on a prior hearing that you could afford counsel and that there would be no problem or you would represent yourself.

Now we are here six months later and you still don't have a lawyer and you are just now asking the Court to appoint one to represent you.

MR. RUBINSON: Well, your Honor, in the last six months my financial status has changed considerably being that I was away, and at that time I probably could have afforded one, where at this time I can't afford one.

THE COURT: Well, all right, Mr. Steel, would

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you proceed to consult with this man while he is here?

MR. STEEL: I will, your Honor.

THE COURT: And call his probation officer, tell him he is here to consult you tomorrow morning, and to go to the clerk's office and file the necessary affidavit of indigency.

All right. You may leave with your lawyer.

And Mr.Chester, I am still waiting to hear from a lawyer to represent you.

What happened when you were here before?

MR. CHESTER: Judge, I haven't been here before but I filed motions some time ago prior to September the 3rd, and at the time of arraignment, that is the time I asked an attorney, but because I was employed, and I said I don't want to mislead the court, I still am employed but I live week to week and I will be unemployed as soon as this trial starts.

THE COURT: As soon as thistrial starts?

MR.CHESTER: Yes, ma'am.

THE COURT: I don't know what that means. You mean your employer doesn't know you have been indicted?

MR. CHESTER: No.

THE COURT: And you are now here on a pretrial conference?

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MR. CHESTER: That is correct.

THE COURT: Well, all right. You may be seated. I will still hope to find an attorney before we adjourn today to represent you.

MR. STEEL: Your Honor, I just have one question. I know very often in these affidavits that the procedure is that the affidavit is sworn to in court. Do you wish that done?

THE COURT: Well, I think there is a new form out. I am not completely certain if there is no portion on there for the defendant to swear to the statements made therein.

Well, tomorrow morning or tomorrow afternoon, I will take his statement under oath. Tomorrow afternoon at 2 o'clock, if there is no portion on there, that requires him to swear to the information contained therein.

MR. STEEL: You so wish him to appear tomorrow?

THE COURT: If there is no portion on the form which requires an oath on his part to the statements made therein. The government has questioned his right to be represented under the Criminal Justice Act believing that he has the funds.

He is therefore required to make a statement under oath.

Is that clear?

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MR. STEEL: I understand.

THE COURT: Anything else?

MR. STEEL: No, your Honor.

THE COURT: And that there is no form of that kind -- if there is no form of that kind, bring him back at 2 o'clock tomorrow, the Court will take his statement under oath.

All right, that's all.

* * *

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* * *

THE COURT: Mr. Steel, I see you are back. Do you have something?

MR. STEEL: Yes, I have two problems. I will take them in order.

When your law clerk called me he indicated the trial would take approximately two weeks. I now understand that the government has estimated that its case alone will take three and this gentleman said that the case might take six to seven weeks. That would -- this gentleman right here (indicating Mr. Thabner), my client indicated the same thing.

THE COURT: Have we placed a trial date on this case?

MR. WOHL: Yes, your Honor, January 14, 1975.

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MR. STEEL: Your Honor, it would be extremely difficult in December for me to work into my calendar in January,that block of time. I think the Court should be aware of it. Two weeks I could have, two to three weeks I suppose I could have done without that much difficulty. Six to seven weeks would be extremely difficult.

THE COURT: And how long is the government?

MR. WOHL: I have indicated to the defense, your Honor, that the government's case I would estimate would take no more than three weeks and it may take less than three weeks, but it would certainly not take less than two weeks.

My best estimate would be two and a half to three weeks. Actually it depends on how many defendants go to trial, because that determines the number of arguments and the number of cross examination- of each witness, and I am assuming that all the defendants who are making motions and who are present here are going to go to trial. If that occurs the government expects there will be two and a half to three weeks from the beginning of the trial until the closing of the government's case.

MR. STEEL: Your Honor, there is a second problem which I suppose should be raised in any event. My client indicates to me that he is in custody inFlorida, and will remain in custody for the next three months.

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MR. RUBINSON: Three months approximately.

MR. STEEL: I don't know what arrangements the government can make.

THE COURT: Is the defendant here on a writ, Mr. Wohl?

MR. WOHL: He is not here on a writ. He could have been brought up on a writ but my understanding is that he is on sort of a work release program down in Florida so rather than bring him up on a writ, the authorities in Florida agreed to just allow him to come up on his own.

MR. STEEL: Well, the problem is that he would have to return down there and in order to prepare this case, it would seem that it would be absolutely essential that he be in New York.

MR. WOHL: We can certainly arrange to have him produced here on a writ so that he would be in New York at all times if that is necessary.

MR. RUBINSON: Your Honor, may I speak?

I don't think that is the problem. I can come up whenever it is necessary for me to come up. I don't think that's a problem and the Probation Department certainly feels that I should come up. There was no -- there is no necessity to bring me up on a writ because I am not -- I am on probation now. I have no sentence. My sentence

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has been terminated.

THE COURT: Now, one of the things is to get the transcript of what transpired here previously with respect to point of counsel in any event for both of these defendants, because it seems to me that both defendants must have been advised at some point that they would have to get counsel, and if they could not afford an attorney the Court would appoint one for them or that they have already advised the Court that they were representing themselves and didn't need an attorney despite that advice, because here it is December and as I said this indictment has been filed for six months.

And certainly the Court should have been advised somehow before now thatyou were with an attorney.

MR. RUBINSON: If your Honor so rules, I will represent myself.

THE COURT: Well, I just want to get the record clear.

MR. RUBINSON: I don't remember. I asked Mr. Wohl if he recalled. He don't remember either, and there are other attorneys, you know, that were there at that time. I don't know if they remember.

THE COURT: Well, we don't have to rely on our memory, Mr. Rubinson. We don't have any criminal proceedings

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that are off the record. Has your assistant gone to get the record?

* * *

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United States of America

v. 74 Cr. 573

Norman Rubinson, et al.

New York, New York

December 6, 1974
11:15 a.m.

- - -

(Proceedings resumed.)

- - -

MR. WOHL: Your Honor, Mr. Robson asked me to tell you that he is on trial before Judge Bonsal right now, and he will try to make arrangements to appear before your Honor as soon as possible to continue any discussion related to his motion, which is the motion related to the alleged promises to the defendant Peiffer.

He told me to tell you that he can't be here now. They have a witness testifying apparently.

THE COURT: Well, let us go back to the matter of Mr. Rubinson.

The Court has now secured a copy of the proceedings which took place here on June the 27th of this year, 1974. The indictment in this case was filed -- do you have

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the original indictment there, Mr. Clerk?

THE CLERK: Yes, your Honor (handing).

THE COURT: The indictment in this case was filed on June 4, 1974, and on June 27th, the Court held its first pretrial conference in this case, and the record reads as follows:

"First, gentlemen, I would like to make sure that each defendant here is represented by some counsel so we don't have to go through this again.

"Norman Rubinson is represented by whom?

"MR. RUBINSON: By myself, your Honor."

And then we went on to Sidney Stein.

And then later in the proceedings, Mr. Rubinson addressed the Court as follows:

"Your Honor, I don't have an attorney and I am going to be incarcerated on August 5th for six months. I want to handle this particular case myself for certain reason.

"You have another case before you, a civil case, which involves some of the defendants or most of the defendants in this case as witnesses. That is 70 Civil 4037. That's Weitzman, who is a co-conspirator, a main-line witness in this case, is suing for half a million dollarsm Stein, Feiffer and Rubinson, myself being

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Rubinson.

"They have taken depositions in this case and are still taking depositions in the civil matters which pertains to this criminal matter as to their interrogations. Any findings that they are doing in the civil matter before your Court is going to be used in this criminal matter. I am sure Mr. Wohl knows about it. There are tapes in this case" -- and Mr. Wohl interrupted, "That is not true, your Honor.

"THE COURT: They are not taking depositions?

"R MR. WOHL: I know nothing about the civil matter and Mr. Rubinson's statement that I know about the civil matter and denied to use the fruits of the civil matter in this criminal prosecution is not true. The government regards that civil case as an entirely separate matter that may have overlapping facts, but certainly the government is not a party to that civil case and is not intending to use any of the fruits of it or participate in the civil case in any way."

And Mr. Rubinson, I believe you told me yesterday I did enjoin further discovery in that civil action, is that right?

MR. RUBINSON: Yes, ma'am. I received a letter from the court

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THE COURT: I just want a yes or no answer.

MR. RUBINSON: Yes, you did.

THE COURT: Then the Court continuing:

"THE COURT: I see. I will have to check into the status of that civil matter."

And then Mr. Rubinson: "I have interrogations here which is specifically about National Venture, Jerome Haskell.

"THE COURT: We may have stayed depositions. It sounds vaguely familiar to me. I don't recall it, however."

And then it went on like that for the next page or so.

And then, as I said, it continued for several pages discussing that civil matter, and then the transcript continues on page 7 where Mr. Rubinson made reference to a tape in the Radio Hill case.

Now, gentlemen, we can't have this conferring while the Court is reading or proceeding. We had a lot of that yesterday, and when we have a multi-defendant case like this, you are just going to have to be patient as the Court deals with each defendant separately, and not engage in unnecessary conversation. Now, obviously counsel have the right to consult with co-counsel or counsel for

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other defendants, but this talking and carrying on while the Court is trying to resolve some matter is not going to be permitted.

And then as I said on page 7 of the transcript the Court said:

"We are not going to take up motions at this time."

And then Mr. Rubinson said, "Well, I'm not going to be here. I am going to be incarcerated. That is what I was going to be asking you whether it would be possible, being I'm doing my own defense in this case, for reasons that my attorney can't be reached because he is in Europe. He didn't come to my arraignment and to this hearing.

"THE COURT: You have an attorney?

MR. RUBINSON: I did have one, but we can't find him now because the government tried to reach him and they called me at my home and called me to appear myself because they couldn't get my attorney.

"THE COURT: How long will he be in Europe?

"MR. RUBINSON: I have no idea. I don't want to use him in any event because I am more familiar with this case than anybody is. I think I have a very good defense. I would like my sentence stayed until the outcome of this case. I have a six-month sentence and this will give me time to prepare myself.

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"THE COURT: I don't know anything about the other sentence, and I could not stay it. You have to go before the Judge."

And then the Court said, "The trial now is set for Tuesday, January 14, 1975, 10 o'clock, and all parties were given until September 1st to file motions, and the Court indicated a date would then be set. And then later on in the transcript it shows on page 10 that Mr. Rubinson said the follows:

"Your Honor, may I ask you to direct the U.S. Attorney, if I'm incarcerated, to come visit me so we can discuss any motions that may have to be discussed?"

And then the government said, Mr. Wohl "The government would submit, your Honor, if Mr. Rubinson wants to initiate any discussions of that sort, he can do so through correspondence.

"MR. RUBINSON: I dn't think so, your Honor, because I would like to argue this myself. There are tapes, I know there are tapes. They have been admitted in court."

And then the Court addressing Mr. Rubinson further said:

"You have a right to represent yourself but I strongly urge you to get a lawyer. It seems to me like a very complicated case, and if you haven't had any legal

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training or experience, you are going to be in great difficulty.

"MR. RUBINSON: I understand that, your Honor, because there are Securities and Exchange Commissions" -- and then Mr. Rubinson says "Like I say, I'm going to be incarcerated and I'm sure you can direct him wherever I am going to be so we can take it up in an intelligent manner."

Again he is asking the U.S. Attorney to contact him or visit him in prison.

Then Mr. Wohl said, "So the record is clear on this point, I think I should reflect the fact that through the grand jury investigation of this matter, Mr. Rubinson has been represented by Mr. Frank Freeman, an attorney in Miam, Florida, who has appeared in my office on at least two occasions on behalf of Mr. Rubinson; has also made numerous phone calls on behalf of Mr. Rubinson, and has represented to me that he expects to represent Mr. Rubinson in this particular matter. I just wanted to make it clear that we are not dealing here with a defendant who has never had any counsel in this matter."

Now, as the record discloses, Mr. Rubinson, you were represented by counsel in this matter, Frank Freeman of Miami, until your appearance here on June 27th, at which time you advised the Court thatyou wanted to

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represent yourself.

MR. RUBINSON: Well, that's very true, and this is a problem. Mr. Freeman became the president of Biscayana Air Lines and became very busy in the airline business and that way he could not take care of me properly. He did go to Europe at that time and didn't tell me, he didn't tell anybody where he was going, I mean, his office knew and I called his office and they said he was in Europe and I said when is he coming back and he didn't know.

THE COURT: You said you wanted to represent yourself?

MR. RUBINSON: Yes . When I came up here at that time in June, when all this testimony was taken, I did say I would have to represent myself. There was no lawyer available to me at that time. At that time I wasn't looking for a court appointed lawyer. At that time I was going to be incarcerated so I thought that on a temporary basis I should represent myself and then when the trial was ready to start I should get a lawyer, and that's the reason I am asking this Court to appoint a lawyer at this time.

THE COURT: Let me ask you this: Did you file a motion by September 1st asking the Court to appoint a lawyer for you?

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lawyer for you?

MR. RUBINSON: No, ma'am, I didn't, because September 1st, by that time, as you noticed, I was incarcerated August 5th, and during --

THE COURT: You say you have been incarcerated. What is your sentence?

MR. RUBINSON: I am not sentenced any more. My sentence was terminated by Judge Weinstein and I am on 18 months probation, four months on probation is to serve in the Halfway House, of which I am doing now, and I am carrying meetings for the rehabilitation of the other residents at Halfway House and I am in the process of putting together a halfway house for the state.

THE COURT: Let us not go off into irrelevancies. What is your present setnence? You are not presently incarcerated?

MR. RUBINSON: No, ma'am, I am not. I am under the jurisdiction of the Probation Department.

THE COURT: Of this court?

MR. RUBINSON: No, ma'am, of the Probation Department in Miami, Florida. I have a copy of my sentence in my pocket if you would like to see it, of the termination.

THE COURT: Are you required to serve any time on

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weekends or during the week?

MR. RUBINSON: I do stay at the Halfway House every night.

THE COURT: Until when?

MR.RUBINSON: For the next three months. It was four months from October 10th.

THE COURT: And did you serve any time in prison with respect to the sentence here in New York?

MR. RUBINSON: Yes, ma'am. I did.

THE COURT: How much time did you serve?

MR.RUBINSON: From August 5th until October 10th.

THE COURT: And what was your conviction for?

MR. RUBINSON: I pleaded guilty to a two-year count in thesecurities situation.

THE COURT: Were you represented by counsel?

MR. RUBINSON: By Frank Freeman, yes.

THE COURT: And had you been indicted in this case at that time? That was you say August? August '74?

MR. RUBINSON: I was sentenced in April and Judge Weinstein gave me three months to appear for incarceration, and in between that time I was indicted in this case. And I was sentenced.

THE COURT: Is that your only conviction? Have you been involved in a similar case of this kind before?

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MR. RUBINSON: Well, your Honor, this all stems from the Radio Hill matter.

THE COURT: Were you a defendant in Radio Hill also?

MR. RUBINSON: Yes, ma'am, in a civil action that turned to be a criminal action because of those tapes in particular.

THE COURT: Well, let me ask you whether you have any other convictions similar to the one you are now serving a sentence for?

MR. RUBINSON: I am not under sentence now, ma'am.

THE COURT: You just told me that you are in a Halfway House pursuant to a sentence given you by Judge Weinstein, is that it?

MR. RUBINSON: Yes. Okay. That was -- all right.

THE COURT: My question to you was, have you been convicted or involved in a similar criminal case?

MR. RUBINSON: Yes, ma'am, I was and the sentence and also for perjury conviction before.

THE COURT: You have a prior perjury conviction?

MR. RUBINSON: Yes, ma'am.

THE COURT: And another prior conviction in a securities case?

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MR. RUBINSON: All stemming from the case that this stems from. The reason I mentioned this Radio Hill matter because that's going to be consequently brought up in this case, and all of the convictions come from that one case, and this case --

THE COURT: Well, we are not going into that. What we are on now is your request at this late date for the Court to appoint counsel for you. Now, when the Court sought to do that yesterday, we didn't have this transcript of the proceedings. It didn't come up until the end It seems to me that the record is clear that you stated to the Court at thattime that you intended to represent yourself and the Court made it clear at the outset that we were taking up the matter of counsel so that we wouldn't have to go over that again. And it wasn't until you appeared here yesterday that you made this request, isn't that so? You didn't make any motion?

MR. RUBINSON: No, ma'am, I didn't, but certain things have happened in this case where Mr. Wohl mentioned that two of the defendants here might be taking guilty pleas and this case seems to be getting more complicated than I thought it would get, so therefore, I would request counsel at this time.

THE COURT: Well, it must be clear to you that

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we cannot permit defendants in criminal cases to represent on one hand that they are going to represent themselves, and then come in shortly before trial and say, "I'd like the Court to appoint a lawyer for me."

You were duly warned of the complicated nature of this case. This Court said on the record, the Court urged you then to get a lawyer.

MR. RUBINSON: Well, I would like to say one more thing, your Honor.

I have been in touch wi[illegible] Chester, and Mr. Chester told me he filed a motion asking for a court appointed lawyer and nobody heard it yet and they are going to hear the motions at this date, so I thought rather than sending a motion in, I would make it a verbal motion.

THE COURT: Well, that was Mr. Chester's motion. We are on your case right now.

As you indicated yesterday, you have been in business for a large number of years, and you were actually incarcerated for only a short period of time, so that twhe purpose of that must have been so that your income and livelihood would not be disrupted, and you are presently serving a sentence which permits you to work during the day. What was that business you say you were in?

MR. RUBINSON: I was in the travel business,

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putting together charter groups for European and South American travel. But I am also obligated, your Honor, to pay the government a $10,000 fine that was imposed upon me on a monthly basis.

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THE COURT: How long have you been a member of the bar?

MR. CHESTER: Since 1950.

THE COURT: Did you say that you have had a $10,000 equity in your house at the present time?

MR. CHESTER: Yes.

THE COURT: All right, with respect to your motion to appoint counsel, that is denied, on the ground that you do not fall within the contemplation of the Criminal Justice Act, since you have a job which pays you $25,000 a year, and you have a $10,000 equity in your home.

Now, with respect to you, Mr. Rubinson, the record is clear that you told the Court in June, when you appeared here, that you intended to represent yourself.

So your motion for the appointment of counsel is denied.

* * *

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AFTERNOON SESSION

THE COURT: Gentlemen, I believe when we rested for lunch, Mr. Berger, was it, was speaking to the motion made by all defendants for a bill of particulars.

MR. BERGER: Yes, your Honor. I had just about completed that motion. The only other part that I wish to address myself to with regard to the bill of particulars is that on the conspiracy count, that of course is again stated very broadly, conspiracy being agreement.

I would like the Government to set forth generally what the agreement, the alleged agreement, was, between the parties.

In other words, what was the conspiracy, what were its purposes and its goals, so that we are not confronted with the problem of a possible multiple conspiracy in the Kotteokos situation.

THE COURT: What situation?

MR. BERGER: United States versus Kotteokos.

THE COURT: You have to realize we are not familiar with every case ever filed in this case. Please spell out these peculiar names for the reporter. We haven't heard of every case that has ever been tried.

MR. BERGER: The situation being that if the

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Government proves a conspiracy different from the one they allege or if the Government proves more than one conspiracy, in other words, multiple conspiracies, then we are entitled to an instruction to the jury relative to multiple conspiracies, and therefore, it is incumbent upon the Government to set forth the specific agreement, the specific conspiracy which they are alleging so that that is the conspiracy they must prove.

The indictment, of course, is general in that regard, and I would like to know the exact nature of the conspiracy alleged by the Government.

THE COURT: Well, that application is denied. The conspiracy is spelled out in Count 1.

All right, is there any other defendant who would like to speak to this motion for a bill of particulars?

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All right, do you have anything else?

MR. CHESTER: One other thing here. They have alleged in August 1968 a conspiracy started, and it went all the way through till June 4, 1974, practically six years, yet there is no information in here, after 1970, of any overt acts.

I would like to know this. When and where did the conspiracy start? They say in New York. I'd like to know when and where the conspiracy started, and at what time the conspiracy came up to New York, because by his own words,

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previously, he said when the SEC recommended some criminal action be taken, they started it, they wanted to start it in the Southern District of Florida.

Now, the co-conspirators, myself and Mr. Reynolds, I'm the one that took the company over in August '68. I was in Florida, that's where the corporation was, that's where the corporation through myself decided to spin this stock off. Nobody was ever in New York.

THE COURT: Well, they are going to have to prove at least one of these overt acts occurred in the Southern District of New York.

MR. CHESTER: Well, I've got a motion --

THE COURT: They may not be able to prove that. Again, that's another problem. But they have alleged here that the conspiracy started on or about August the 1st, '68.

They are not required to give any precise date if that's what you are looking for.

MR. CHESTER: No, no, I am not looking for that. They said in New York.

THE COURT: They said up to and including the filing of this indictment in the Southern District of New York.

Now, the next point is, they are not required

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to set forth in the indictment every overt act on which they rely.

MR. CHESTER: Judge, my point is why should myself and all the people from Florida be forced into New York when the venue was never here in the first place.

THE COURT: That will have to await trial. Your claim that the venue has never been here because no overt act -- an overt act has not been committed here cannot be determined until we have had the trial.

So you can renew that motion at the end of the trial, if you find that the proof fails to show that any overt act in connection with this conspiracy took place in the Southern District of New York.

* * *

* * *

MR. BERGER: With regard to the 3500 material although it is the general practice to supply that material immediately after or sometimes immediately before a witness testifies, many of the judges and many of the circuits, including the Second Circuit, have taken the position that on a long, complicated, multiple defendant trial, there is no damage to the Government if it knows its witnesses, to supply that material weeks in advance. That helps expedite the trial.

What happens is that because of the volume of that 3500 material, an attorney has a tendency to get up and during his cross examination tread water, so to speak.

Now, the reason he does that is to get through the day in order to spend that evening going over his 3500 material. I don't believe that the Government is prejudiced by supplying this material as to witnesses it knows it is going to use well in advance.

Certainly, it is not prejudicial to the Government, nor to the judicial system, to make the defendants aware of inconsistent statements, statements that can be used

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to impeach a witness well in advance. That's only fair play.

If the Government does know what witnesses it is going to use, and does know who those witnesses are today, I think in the interest of justice, in the interests of a fair trial, a speedy trial, a proper defense, that material should be made available to us now, because we are only four weeks or six weeks away from trial, we have all got other things to do, other cases we are handling, it is impossible to go over that volume of material right after a witness testifies and if we do go over it, we really cannot assimilate it, and do a proper job of cross examination, and I believe that it should be given to us as soon as the Government has it available.

THE COURT: Well, I gather the Government has heard you.

Do you have some reply to that?

MR. WOHL: Well, your Honor, it is my normal practice, and I have indicated to the defense counsel in this case, although Mr. Berger was not present at our meeting day before yesterday, that I would anticipate furnishing to the defense counsel the 3500 material of a witness the day before the witness testifies, so that the defense counsel will have an ample opportunity to review it and the trial will not be delayed.

So far as I know, that's the normal practice

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in our office when we do furnish it in advance of trial. I have not heard of Mr. Berger's claimed practice of doing it many weeks before the trial and the Government would certainly oppose that.

We think it will be manageable if it is provided the day before the witness testifies.

THE COURT: All right.

As I told you, Mr. Chester, the Government is not required to turn that over, but they have now volunteered to give it the day before.

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that we would turn over to the defendants, to each defendant, his own statement, but we would not turn over to other defendants the statements of their co-defendants.

We also advised the defendants that we would turn over to them any materials or documents that that defendant had turned over to the Government, either in the SEC investigation or the civil trial or the grand jury investigation, and again, that that material would be turned over to the defendant who had turned it over to the Government.

Generally it being the Government's position that if the defendants want to share these things, that's up to them.

We in addition advised the defense that we would voluntarily turn over all documents -- and by turn over, I mean make available for inspection or copying -- all documents in the Government's possession relating to sales of Stern-Haskell stock. That would include, but not necessarily be limited to, order tickets, confirmations, stock certificates, transfer records and correspondence.

In addition, we advised the defendants that we would

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turn over to them or make available to them all documents in the Government's possession relating to the initial distribution of Stern-Haskell stock, and also correspondence and notices to various persons relating to the distribution of Stern-Haskell stock, including notices that were sent to shareholders of a company called National Ventures, which is a company closely connected with Stern-Haskell stock.

Also, there are various agreements that were entered into by various persons relating to transactions in National Venture stock, Stern-Haskell stock, as well as two other companies called Diston Industries and Mobile Home Ventures we would make available those to the defendants, as well as any other documents relating to transactions in or distribution of stock in these other companies, National Ventures, Diston Industries and Mobile Home Ventures which were connected with Stern-Haskell.

We told the defendants that we would make available to them, to each defendant, Government records of convictions of that defendant.

We told the defendants that we would make available -- excuse me -- that we would not agree to production of all documents gathered by the Securities and Exchange Commission during the course of its investigation.

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Your Honor has already denied that discovery. Or all documents gathered by the grand jury in the course of its investigation.

We would not make available to the defendants prior to trial records of convictions of Government witnesses, but rather would treat that material as 3500 material and make it available at the same time as the other statements of the witnesses.

That we would not make available to the defendants prior to trial statements of co-conspirators, but rather would regard that as 3500 material in the event that any co-conspirators testify as witnesses.

We would not provide the defense with the names and addresses of Government witnesses expected to be called at trial.

We would not provide the defense with the reports and analyses and internal memoranda of the Securities and Exchange Commission concerning Stern-Haskell.

I also advised the defense counsel that to my knowledge at the present time we do not have any exculpatory material within the meaning of Brady versus Maryland that should be turned over to the defense.

In addition, I advised the defense counsel that there are in possession of the Government certain tape

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recordings that include statements of the Defendant Rubinson, that we do not know at the present time whether or not those tape recordings will be offered by the Government in evidence at the trial.

I also pointed out that generally these tape recordings do not relate to Stern-Haskell stock, but instead relate to another stock transaction, but that I would review the tape recordings and if any of them are material to Stern-Haskell, then the Government will turn them over; if the Government expects to offer them at trial, we will turn them over substantially in advance of trial so as to avoid any problems of audibility.

THE COURT: Is that the tape you had reference to, Mr. Rubinson?

MR. RUBINSON: Yes, ma'am.

MR. WOHL: I also took the position, however, that if on reviewing the tapes we come to the conclusion that there is nothing on the tapes that relates in any way to the issues at this trial, and that will be relating to Stern-Haskell, National Ventures, or the other two companies, Diston Industries and Mobile Home Ventures that I mentioned, then we would decline to turn them over, but we haven't taken a final position on the tapes yet.

I also indicated to the defense counsel that we

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would file our bill of particulars and provide this documentary discovery by making the material available in my office on December 16, 1974, and I pointed -- I also agreed that we would try to have some of the documents available by a week from yesterday, in other words, next Thursday, but they are very voluminous and I am not certain exactly how many we will have available by that time, so we will try to have them available next Thursday but we agree we will certainly have the bill of particulars and the documents to be discovered available by December 16th.

THE COURT

* * *

* * *

...[t]he indictment shows that you appeared here on June the 17th. The minutes on the indictment shows that you appeared in person on June the 17th before Judge Knapp.

Do you remember that?

MR. CHESTER: Before the grand jury?

THE COURT: No, before Judge Knapp in what we call Part I of this court, where you were arraigned.

Do you recall that?

MR. CHESTER: Yes.

THE COURT: And you appeared at that time without counsel, is that right?

MR. CHESTER: That is correct.

THE COURT: Now, did Judge Knapp advise you that you should get a lawyer or was that matter taken up at that time?

What did you tell him about your lawyer?

MR. CHESTER: That I didn't have a lawyer, that

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I couldn't afford a lawyer, and again he asked me was I employed, and I said yes, I was, and he said you are not entitled to a lawyer because I make $25,000 a year.

And then after I got back to Miami, I started researching it and I didn't feel that it was fair to me at the present time when I am living week to week, it costs $350 a week, I couldn't hire a lawyer. A lawyer will want $5,000, and $5,000 a week to sit in here so it is easy enough to say you make $25,000, Mr. Chester, you can get $350 a week but I have nothing to pay a lawyer with.

When they take out withholding tax for myself, for somebody who is not working they take out $7,000 from my income tax and appoint somebody a lawyer. So I don't think it is fair for me to go to trial without a lawyer and as soon as this trial starts I am sure I will lose my job anyway so then I will be without income, but just because I have income at the present time is still not sufficient for me to hire an attorney, because I have no money, and lawyers like money.

THE COURT: Well, I just want to complete the record with respect to that, and also with respect to Mr. Rubinson who made a similar motion.

Mr. Rubinson, the indictment discloses that you

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appeared here on June 17th before Judge Knapp without an attorney, so that the first time you appeared in court was not June 27th, as I thought earlier, when you appeared before me, and said to me that you would represent yourself, but that you were here on a prior occasion when you -- when the Court directed a not guilty plea in your case, set bail, and set the limits of your bail to the continental United States and to the Dominican Republic.

Do you recall that?

MR. RUBINSON: Yes.

THE COURT: Did Judge Knapp take up the matter of counsel with you at that time?

MR. RUBINSON: No, he did not, I am saying that I don't remember him saying that --

THE COURT: Did he ask if you had a lawyer?

MR. RUBINSON: Yes, and I told him the lawyer is not here. I am sure I did. Because at that time I still had Mr. Freeman but we couldn't locate him, he was in Europe. And Mr. Wohl is cognizant of that because he used to call Mr. Freeman all the time, and then he couldn't get hold of Mr. Freeman finally so he called me at my home.

So I did have a lawyer and then I didn't have a lawyer, now we can't find a lawyer, so I don't

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have a lawyer. 166

THE COURT: Well, just to complete the record, you were here on June 17th when you were arraigned without a lawyer, and as you point out, the Judge asked you about a lawyer at that time.

THE COURT: All right, the record will disclose what else transpired that has not yet been transcribed. I just checked with the reporters. But whenever you appear in this court in a criminal case everything you say or anybody else says is taken down, Mr. Rubinson.

MR. RUBINSON: I understand.

* * *

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-against-	:	74 Cr. 573
NORMAN RUBINSON, et al.,	:	
Defendants.	:	

Before:

Hon. Constance B. Motley,

District Judge

New York, New York
December 20, 1974
5:00 p.m.

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney
For the Government
BY; FRANK H. WOHL, Esq.
JO ANN HARRIS,
Assistant United States Attorneys

NORMAN RUBINSON,
Pro se Defendant

THE COURT: All right, the reason we are here is to take up the matter of Mr. Rubinson's counsel. Do you have any information as to Mr. Rubinson's financial ability to put on the record?

MR. WOHL: First, about 15 minutes before the session started today I handed Mr. Rubinson the financial affidavit form which is normally required for someone to obtain appointed counsel under the Criminal Justice Act, and I see that Mr. Rubinson has not yet executed it. We would take the position, first of all, that until Mr. Rubinson executes the affidavit and provides the appropriate financial information that he has not even made any kind of initial showing that he qualifies for appointment of counsel.

Secondly, I would like to bring to the Court's attention that in prior litigation Mr. Rubinson's financial affairs have been gone into in some detail and that is the case of Securities and Exchange Commission versus Radio Hill Mines Company and other defendants, 70 Civil 3286 in this court.

Basically, that was a case in which a judgment was obtained requiring Mr. Rubinson to file with the court his securities transactions. When he failed to do so, the Securities and Exchange Commission brought on a motion citing him for contempt of court.

In an opinion by Judge Tenney dated February 20, 1973, the Commission's motion was granted and in that opinion Judge Tenney found that a company, the name of which I believe was Equity Financial Trading Corp., was in fact the alter ego of Norman Rubinson, and that therefore Mr. Rubinson's financial affairs had to be examined in light of the activities of both that corporation and other related corporations which was set up solely for the purpose of Mr. Rubinson avoiding disclosure of his financial affairs both to numerous creditors who seek to find them out and also possibly to the Internal Revenue Service.

Now, the Government would submit that Mr. Rubinson does not qualify for the appointment of counsel. Basically it has come to the Government's attention through numerous witnesses that Mr. Rubinson occupies at the present time and has occupied for a number of years a rather large and attractive house on Hibiscus Island in Florida, which is a wealthy community where, as I understand it, values for rental are quite high. We understand that Mr. Rubinson --

THE COURT: I think Mr. Rubinson told me last time he was here that he ran some company for 29 years; is that it?

MR. RUBINSON: Yes, ma'am.

THE COURT: What was the name of that company?

MR. RUBINSON: That was Allen Electronic Industries.

THE COURT: How long had you been the director or owner of that?

MR. RUBINSON: That was 15 or 18 years. Your Honor, I would --

MR. WOHL: May I just complete my statement?

THE COURT: Yes, you are going to have a chance to complete your statement.

I just want you to tell me the name of the company, Mr. Rubinson.

MR. RUBINSON: I built this particular house he is talking about in 1950 at a cost of $17,000.

THE COURT: In any event, as he said before, he has been a substantial businessman most of his life.

MR. WOHL: We understand that one of the automobiles that Mr. Rubinson has driven for the past number of years and frequently drives at the present time is a Rolls Royce. We understand that he and his son also share in the driving of an autombile that is described to me as either a Maserati or a Lamborghini, both of which are extraordinary Italian sports cars costing well over $10,000. We understand that he also has substantial

corporate interests; that he has jewelry, although I don't believe I see him wearing his watch today, but I have seen him -- yes, I see him now. He is wearing his Bougeret wristwatch, which I understand to be a rather expensive wristwatch.

When the investigator from the Securities and Exchange Commission called to inform Mr. Rubinson of this hearing and to whether he was adequately indigent to receive appointed counsel, the person who responded on the other end of the telephone sounded very much like a domestic servant and our information is that in his household at the present time Mr. Rubinson employs one or more domestic servants.

In any event, in light of the facts, some of which appear from the record in the Radio Hill Mines case, which also establishes that Mr. Rubinson carries on his financial affairs through an intricate corporate structure where the corporations really are nothing more than Mr. Rubinson and his son, Mitchell Rubinson, the Government would submit that there would appear to be no basis for appointment of counsel, and the Government will also request that Mr. Rubinson be required to make any showing that he offers in support of this under oath, including the financial affidavit that anything he wishes to add to it.

THE COURT: All right, Mr. Rubinson, come on up and take the witness stand and be sworn.

N O R M A N R U B I N S O N, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WOHL:

Q Mr. Rubinson, are you employed?

A No, I'm not.

Q When was the last time you were employed?

A I believe about five years ago.

Q With whom do you normally reside?

A I normally reside with my wife.

Q And what is your address?

A 22 North Hibiscus Drive, Miami Beach, Florida.

Q Is that located on an island?

A Yes, it is.

Q How many other houses are on the island?

A I don't know. Probably more than a hundred. About a hundred.

Q Is it a private island or public island?

A It is a public island owned by the City.

Q Isn't it necessary to go through some kind of a gate or guard in order to get admitted on the island?

A That is the association which pays for those

particular guards when they are there.

Q What association is that?

A The Palm Hibiscus Association.

Q Is that an association of all the residents of Hibiscus Island?

A No, it is not. Only those who want to belong.

Q And are you a member of that association?

A No, I'm not.

THE COURT: Is your wife a member?

THE WITNESS: No, she isn't. I was a member 10 years ago. I haven't attended a meeting in 10 years.

THE COURT: Do you pay dues to the association?

THE WITNESS: No, ma'am, I don't.

Q Have you received in the past 12 months any income from any business, profession or other form of self employment or in the form of rent payments, interest, dividends, retirement or annuity payments or other sources?

THE COURT: That is too long a question. Break it down.

Q Within the past 10 months have you received any income from any source?

A I don't believe so.

Q Have you received any salaries?

A I don't believe so.

Q Have you received any interest?

A I don't believe so.

Q Have you received any rental payments?

A No, sir.

Q Have you received any dividends?

A I don't believe so.

THE COURT: Just a minute. You are saying you don't believe so.

THE WITNESS: No, I didn't. I mean I didn't.

THE COURT: You are not saying that. You said you don't believe so.

THE WITNESS: I didn't.

THE COURT: Either you did or you didn't.

THE WITNESS: I didn't.

THE COURT: You didn't receive any income in the last 12 months?

THE WITNESS: No, your Honor.

Q How about your wife, did she receive any income in the last 12 months?

A No, she didn't.

Q Have you received any money of any kind from any source in the last 12 months?

A I received some loans, yes.

Q From whom did you obtain those loans?

A My mother-in-law, my father-in-law and my son.

Q What is your mother-in-law's name?

A Pearl Cortman.

Q What is your father-in-law's name?

A Murray Cortman. He passed away in May of 1974.

Q What is your son's name?

A Mitchell Rubinson.

Q How many loans did you obtain from your father-in-law in the past 12 months?

A I couldn't say. He gave me money necessary to run the household and for personal expenses.

Q How much money did he give you in the past 12 months?

A I did not keep a record.

Q Did he keep a record?

A If he did, he is dead now, so I wouldn't know where it is.

Q Is there any loan agreement relating to those loans?

A No, we have been living together for 30 years. We never had any agreement.

Q What about your mother-in-law, did she loan you any money during the past 12 months?

A Yes.

Q How much did she loan you?

A I don't know, just the household. We have been living together for some 30 years. In this house we have been living together for 24 years.

Q Your son lives in another house on Hibiscus Island; is that right?

A Yes.

Q That is an even bigger house than your house?

A I don't know the size. I never measured it.

THE COURT: Just a minute, that is an evasive answer. How many rooms does your son's house have?

THE WITNESS: Three bedrooms.

THE COURT: How many does yours have?

THE WITNESS: It has four bedrooms.

Q How much money did you borrow from your son in the past 12 months?

A I don't know. I just -- just $500, a thousand dollars. I don't know. I have been incarcerated, as you know, for -- during the past 12 months.

THE COURT: Incidentally, what does your son do for a living?

THE WITNESS: My son had a corporation called Campo Corporation manufacturing campers, a public company.

THE COURT: He had? He doesn't have it now?

THE WITNESS: No, the camping business is no good now. There is no gasoline. Camper sales are off.

THE COURT: Is the business closed?

THE WITNESS: Yes, it is.

Q That was a company also involved in litigation with the SEC, was it not?

A No, sir, it was not involved in litigation with the SEC.

Q Were you ever connected with Campo in your life?

A No, sir, I was not.

THE COURT: You say your son is out of the business. How does your son live now? What does he do for a living?

THE WITNESS: He does the selling of different items. He imports. I don't inquire into his affairs. This gentleman is trying to lead you to believe, and I would like to make some sort of a statement to answer those --

THE COURT: You are making it now under oath.

THE WITNESS: Yes, ma'am, but he is not asking those questions. He didn't ask about Radio Hill to me. He made a statement about it. He didn't ask about Equity Financial Trading. He made a statement. He made a statement about a contempt of court hearing.

THE COURT: His statement isn't evidence either.

That is why we are having a hearing to see what the facts are, so anything he says is not proof or evidence. We are getting at whether you are qualified for appointment of counsel under the Criminal Justice Act and in order to have a lawyer appointed in your case it must appear that you are unable through your own efforts to get a lawyer, that is, your own financial ability.

THE WITNESS: Your Honor, he asked me to file this statement not 15 minutes ago.

THE COURT: Just answer his questions now.

Q How much money have you borrowed from your son in the past 12 months?

A I have no idea. I have no idea. Enough to live on.

Q Is there any loan agreement between yourself and your son?

A No, sir, there is not.

Q For how long a period of time had you been living on these loans from your son, your mother-in-law and your father-in-law?

A At least a few years.

Q How many years?

A At least two or three years.

Q More than two or three years?

A I said at least two or three years.

Q I am asking you whether it is more than two or three years.

A We will let it go at two or three years, because I don't know if it is more.

Q Do you remember if you were living on these loans from your relatives four years ago?

A No, I don't remember.

Q Do you remember if you were living on these loans from your relatives five years ago?

A No, I don't remember.

Q Were they making loans to you four or five years ago?

A I don't remember.

Q Do you own any stock in any companies now?

A I have a record of the stock that I file every three months with the SEC. I file an affidavit and that is in the affidavit. I don't know offhand now exactly, but it is just a few shares of almost nothing at all.

Q You say you don't know whether it is almost nothing at all, but you say it is almost nothing at all?

A It is almost nothing at all. I'd say in total it isn't $2,000, if it could be sold, and I doubt that very much, if it could be sold.

Q Are these stocks held in your own name?

A Those stocks were held in Equity Financial Trading Corporation, of which I assigned to Frank Freeman, the attorney, for fees some time ago, which I notified the SEC of that particular fact. I think there is 90 shares or 9 shares of Investors Fund, which is, I don't know, $10 a share or something, so that it is either $90 or $900. I haven't looked at it for years.

Q For how long has your mother-in-law lived with you?

A We have been living together prior to coming to Miami, in total, 32 years.

Q How is she employed?

A She is not employed. She is a sick woman.

Q How old is she?

A 70, 71.

Q When was the last time your father-in-law was employed?

A I really don't know when the last time he was employed was. He was -- we were working together for over 20 years in the same business, and then, when he retired when he was 65 -- that was about seven years ago -- he had been doing things on his own -- I don't know -- buying and selling different items, electrical wire, things like that.

Q He was employed by Allen Electronics?

A Yes, he was.

Q Now, that was the company of which you were the head; is that right?

A Yes, I was.

Q What was his position at Allen Electronics?

A He was an officer of the corporation, but he was a mechanic and ran the service department.

Q What was his office in the corporation?

A It was either vice-president or secretary. He wound up being the president or he wound up being the secretary. I don't remember.

THE COURT: This is who, again?

THE WITNESS: My father-in-law.

MR. WOHL: This is as to his father-in-law in connection with Allen Electronics.

Q What was your office in Allen Electronics?

A It was either the president or secretary. We changed off. I don't know at which times we were which.

Q Where does all this money come from that you were borrowing from your mother-in-law and father-in-law?

A I don't know. They worked for 50 years. Maybe they saved it. We lived together. They were very frugal people.

Q Haven't you had any discussions with your mother-in-law about what her financial situation is?

A No, I haven't. My father-in-law, when he was with Allen Electronics, made anywhere from $35,000 to $50,000 or $55,000 a year.

THE COURT: Maybe he saved it.

Did you indicate who owns the house in which you now live?

THE WITNESS: No, he didn't ask me.

THE COURT: I'm asking you now. Who owns that house?

THE WITNESS: That is owned by my wife and my daughter.

THE COURT: When did you build that house?

THE WITNESS: In 1950.

THE COURT: Did you say you paid $17,000 to build it?

THE WITNESS: I built it myself. The lot cost $4,500 and the house cost about fifteen.

THE COURT: That is about $20,000?

THE WITNESS: Less than $20,000.

THE COURT: Just a moment. You said you paid $4,000 for the lot; is that right?

THE WITNESS: $4,500.

THE COURT: $4,500 for the lot.

THE WITNESS: Which I didn't pay for. There is a second mortgage. In other words, the lot cost me $4,500, which the man permitted me to build the house on and carried the lot as a second mortgage, and the insurance company gave me a first mortgage for $14,000, so it cost me in cash $2,000 or $1,500 to build the house.

THE COURT: Wait a minute. I can't follow that mathematics. Did you pay $4,500 for the lot somehow by some device; is that correct?

THE WITNESS: By a second mortgage.

THE COURT: Then what did it cost to build that house?

THE WITNESS: About $15,000.

THE COURT: $15,000. So that is $19,500; is that it?

THE WITNESS: Yes, ma'am.

THE COURT: Where is this located again?

THE WITNESS: In Miami Beach on Hibiscus Island.

THE COURT: Miami Beach on Hibiscus Island. What are the real estate taxes on that property as of this year?

THE WITNESS: About $1,200, approximately.

THE COURT: Do you have a receipt to show that?

THE WITNESS: I don't have it here, but we do.

THE COURT: You have it at home?

THE WITNESS: That is right.

THE COURT: So that in 1950 you built a house which cost about $20,000; right?

THE WITNESS: That is right.

THE COURT: That is 24 years ago; isn't that so?

THE WITNESS: Yes, ma'am.

THE COURT: So that house today is worth something like $80,000, if not more; isn't that so?

THE WITNESS: No, ma'am.

THE COURT: Why isn't it worth between $80,000 and $100,000 on Miami Beach, Hibiscus Island? Explain it to me.

THE WITNESS: First we have a $40,000 mortgage.

THE COURT: You have how much of a mortgage on it?

THE WITNESS: $40,000.

THE COURT: $40,000?

THE WITNESS: Yes, ma'am. That is Number 1. Number 2 you couldn't sell a house on Hibiscus Island, a Georgian Colonial house in that style today. It would be impossible to sell the house. There is no market.

THE COURT: What bank has the mortgage on the house?

THE WITNESS: The Equitable Life Insurance Company.

THE COURT: When did you take out the mortgage?

THE WITNESS: That mortgage was taken about a year and a half, two years ago. I did not take the mortgage out.

THE COURT: Who took it out?

THE WITNESS: My son took the mortgage out.

THE COURT: I thought you said your wife and your daughter own the house.

THE WITNESS: Yes, ma'am.

THE COURT: The Court rules the defendant is capable of employing his own counsel. That is all. You can come down.

(Witness excused.)

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

United States of America,

-vs-

Norman Rubinson, et al.,

Defendants.

74 Cr 573

RETURN TO COURT REPORTERS
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New York, New York
January 22, 1975

Before:

HON. CONSTANCE BAKER MOTLEY,

District Judge.

Appearances:

PAUL J. CURRAN, Esq.,
United States Attorney, for the Government
By: Frank Wohl, Esq., Assistant United States Attorney
and
Jo-Ann Harris, Esq., Assistant United States Attorney
Daniel Schatz, Esq., of the Securities and Exchange Commission.

Norman Rubinson, Defendant, pro se

Morton Robson, Esq.,
for defendant Feiffer

William Chester, Defendant, pro se

David Keegan, Esq.,
for defendant Reynolds

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(Appearances - continued)

Ronald P. Fischetti, Esq.,
for defendant Haskell

Thomas Andrews, Esq.,
John Grimes, Esq.,
for defendants Levine and Wax

Morton Berger, Esq.,
for defendant Gardner

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(Case called.)

THE CLERK: Is the government ready?

MR. WOHL: The government is ready.

THE CLERK: Defendant Rubinson?

DEFENDANT RUBINSON: I am here, your Honor, but I still don't have an attorney.

THE CLERK: Defendant Feiffer?

MR. ROBSON: Ready.

THE CLERK: Defendant Chester.

DEFENDANT CHESTER: William Chester, here.

THE CLERK: Defendant Reynolds.

MR. KEEGAN: Your Honor, I am David Keegan, Mr. Reynolds attorney, and I must apologize to the Court. Mr. Reynolds is not here nor will he be able to make it today. The problem is that he lives in Florida and when I returned to my office last night, I received a message at approximately five o'clock that the Court of Appeals had, indeed,

made its decision and that the case was to proceed to trial.

I called him at 6:30 and told him he had to get up here. He checked with the airlines and found there are three flights daily -- seven in the morning, one o'clock in the afternoon and 4:15. The first two were booked solid and the defendant Reynolds has a standby reservation on the afternoon flight, which he can take only if someone else cancels.

I told him that if he didn't get on the standby, he should go to some other town, Miami, and fly up from there.

I am to call him today at lunch time and I am sure he will be here tomorrow. He has authorized me to waive the appearance for the jury selection and the opening statements, if the Court is agreeable to doing that.

THE COURT: Well, he knew that the stay had been granted only to and including Wednesday morning, did he not?

MR. KEEGAN: He did, your Honor, but he didn't know what the Court of Appeals decision was going to be. He was here Tuesday of last week to start the trial at that time and, of course, it had to be postponed.

THE COURT: Well, the question is simply whether you notified him that the stay had been granted to and including Wednesday morning.

MR. KEEGAN: He knew that.

THE COURT: All right. Call the next defendant.

THE CLERK: Defendant Haskell.

MR. FISCHETTI: Defendant Haskell is ready, your Honor.

THE CLERK: Defendant Levine.

MR. ANDREWS: Defendant Levine is ready.

THE CLERK: Defendant Wax.

MR. ANDREWS: Defendant Wax is also ready, your Honor. We have an application, if I may be heard.

THE CLERK: Defendant Gardner.

MR. BERGER: Defendant is ready, your Honor.

At this time, I would like permission of the Court to have the law firm of Maloney, Viviani and Higgins sit in, of counsel to me, for Mr. Gardner.

THE COURT: All right.

MR. FISCHETTI: Your Honor, I represent Mr. Haskell. There is another attorney in this case initially by the name of Emanuel Thebner, who might be present during the early portions of this trial.

THE COURT: All right. Now, Mr. Andrews, you represent Lawrence Levine and Walter Wax/

MR. ANDREWS: I do, your Honor.

THE COURT: I believe that earlier you had informed the Court that you had discussed with your clients,

Mr. Levine and Mr. Wax, the fact that they would both be represented by counsel and that there was no possibility of a conflict of interest.

Do you recall that?

MR. ANDREWS: I do, your Honor.

THE COURT: And that they have agreed to have you represent both of them.

MR. ANDREWS: They have so agreed and I would amend my agreement with your earlier statement. To the extent that I can foresee a possibility, I do not foresee any possibility of a conflict of interest. I certainly can't represent that that sort of thing should never happen. I have discussed the case fully with both clients, separately and together, and I represent to you that I do not see the possibility of a conflict of interest based on what I know about the case to date.

THE COURT: Well, Mr. Levine, did you discuss this problem with your attorney?

DEFENDANT LEVINE: Yes, your Honor, I did.

THE COURT: And you agreed to have him represent you despite the possibility that there might be a conflict?

MR. LEVINE: Yes, I did, your Honor.

THE COURT: Mr. Wax, did you discuss this problem with your attorney?

DEFENDANT WAX: Yes, your Honor.

THE COURT: Did you agree to have him represent you despite the fact there might be a conflict?

MR. WAX: Yes, your Honor.

THE COURT: All right.

MR. WOHL: Your Honor, the government requests that the Court explain to the defendants here on the record what a conflict means, so that we have it clear on the record that they understand that.

THE COURT: Well, that is why I asked them whether they discussed this with their lawyer.

I assume your lawyer advised you that since you are separate defendants in this case, there is the possibility that your defenses might be inconsistent at some point and that is what we mean by a conflict but, a defendant has a right to waive his right to be represented by separate counsel if you understand, and I understood your lawyer to advise the Court earlier that this problem had been thoroughly discussed with you, the possibility of conflict, and that you had waived your right to be separately represented. Is that right?

DEFENDANT LEVINE: That's correct, your Honor.

DEFENDANT WAX: That's correct.

THE COURT: Now, with respect to the Defendant

Stein, he has entered a plea; is that right?

MR. WOHL: That is correct, your honor.

THE COURT: And with respect to the defendant Phillip Kaye, he has entered a plea?

MR. WOHL: That's correct, your Honor.

THE COURT: Then I believe we have accounted for all defendants.

Now, we have a motion here which the Court will take up first. Which defendant is making this motion for a stay? Wax and Levine?

MR. ANDREWS: That's correct, your Honor. We have made a motion in the Court of Appeals. We received the opinion yesterday at about five o'clock in my office. We had to take sometime to digest it -- it is rather lengthy -- but I don't believe we even thoroughly understand it at this moment. However, this morning at 9:30, we delivered to the clerk of the Court of Appeals a written application, a copy of which I believe has been delivered to your Honor, requesting a stay of this trial for a reasonable time so that we may be permitted to make application for writ of certiorari to the Supreme Court of the United States.

We also communicated this request to your Honor's chambers yesterday afternoon and the application was, of course, denied.

THE COURT: Well, if you are making the application to me, I am of the view that the application must be made to the Court of Appeals, which rendered the decision, and then to the United States Supreme Court.

MR. ANDREWS: I understand.

THE COURT: But, if you are making an application to me for a stay, it is denied on the ground that there is no new or novel or important question of federal law involved. The holding is that a trial Court has the power to amend an order nunc pro tunc when there is a reasonable basis for doing so and here the order was plainly ambiguous on its face and there is nothing new or novel about that holding; that is ancient law.

MR. ANDREWS: Of course, your Honor, we would argue that first of all --

THE COURT: So the motion is denied on the ground that there is no new or novel question decided by the Court of Appeals.

MR. ANDREWS: Your Honor, my application to this Court is to delay jury selection and I don't talk about days here but rather hours, so that we can determine whether or not --

THE COURT: Well, we probably won't get to the jury selection in this case until this afternoon, anyhow.

MR. ANDREWS: Thank you, your Honor.

THE COURT: Are there any other preliminary matters that we have to take up.

MR. WOHL: Yes, your Honor. I wanted to bring to your Honor's attention that the defendant, with respect to the defendant Rubinson's appearance here pro se, there are some matters that your Honor should be aware of.

On or about December 4, Mr. Rubinson appeared in my office on his way, I believe, to the Court and said he wanted to see me. He came in and he saw myself and Mr. Schatz and during the course of the conversation he announced that he intended to appear pro se in this case because he had heard from some of his associates in the Halfway House, where he was serving a sentence, that by appearing pro se he would be in a position to address the jury and tell his story, I believe he put it, without ever being cross examined.

At a subsequent time, after your Honor had denied a subsequent application made by Mr. Rubinson to have counsel appointed to him, Mr. Rubinson again appeared in my office, I believe, for the purpose of making a telephone call to have his passport produced and at that time he said that he was going to retain counsel -- he said something to the effect of, I guess I'll get counsel.

In our view, this type of situation may create an opportunity where it would be appropriate for the Court to explain to Mr. Rubinson the rights that a pro se defendant may have and that they would not include the right to, in effect, testify without taking the witness stand and also possibly -- we noticed that although he said he was going to get counsel, we notice he appears today apparently without counsel, and we think it might be appropriate to inquire as to, whether he intends to go pro se and, if so, if he has made any efforts to get counsel.

THE COURT: Well, he is here without counsel. I assume he intends to go pro se. I don't know what you said to the U. S. Attorney but you have in mind that you can take the witness stand and make a statement to the jury without being cross examined, you were misinformed, Mr. Rubinson.

If you take the witness stand, you have to be cross examined by the Government's counse. Do you understand?

MR. WOHL: I think what he was claiming he intended to do was, in effect, in the form of a summation, testify and tell his story and thereby have all the advantages of testifying without taking the witness stand, whereas it would be the Government's position that a pro

se defendant, like any other lawyer, is limited to the evidence that is produced from the witness stand and can only make argument and cannot state facts.

THE COURT: Yes, if that's your intention, the statement by the U. S. Attorney is true and the jury will be instructed that statements made by lawyers and pro se persons representing themselves, are not evidence. The evidence in the case is the testimony that the jurors hear under oath, any exhibits received in evidence, and any stipulations as to certain facts entered into by the lawyers on both sides, and not statements made by litigants or lawyers.

Is there anything else?

MR. WOHL: Just another minor housekeeping matter, your Honor, and that is since the two defendants, Chester and Rubinson, do not have counsel, we have no way to get in touch with them during the course of the trial when, as I understand it, they are going to be staying in New York.

We think it would be appropriate for them to put on the record where they are going to be staying during the course of the trial, so that the Court and counsel can get in touch with them if necessary.

THE COURT: Yes. I think you should let the

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U. S. Attorney know, because the Court attempts to save time by asking the U. S. Attorney often to contact you.

So you let him know where you are staying, Mr. Rubinson and Mr. Chester.

Where are you staying, Mr. Rubinson?

MR. RUBINSON: At this particular time I just got to New York. I may stay in my mother's. I can give him the phone number of my mothers in Brooklyn.

THE COURT: You do that.

Where are you staying, Mr. Chester?

MR. CHESTER: I don't know where I'll be staying tonight. I stayed at the Commodore last night. But the Government never has had any trouble getting in touch with me. They phone every day, so they are in touch with me. As soon as I know where I am going to be going, I'll let them know immediately.

MR. WOHL: I believe Mr. Rubinson has generally been staying at a hotel and we don't want to be in a situation where --

THE COURT: Once the trial gets underway, I think the Court is going to announce each time that we will resume and any defendant who fails to appear or does not come, the Court is going to proceed without them so that will settle that.

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Now, is there anything else?

MR. ROBSON: Your Honor, as your Honor is aware, at some point about two weeks ago, I moved to be released and I moved for the appointment of counsel for Mr. Feiffer.

Your Honor denied the application and has required that I remain as counsel for Mr. Feiffer, which I, of course, am doing and will do. I would like, however, to renew the application to have counsel appointed.

I would accept the appointment myself. I am not being paid by Mr. Feiffer and attending at what will be a five or six week trial, from what I understand is a substantial financial hardship for me, and my law firm and I do request your Honor appoint me as counsel so that I can obtain whatever compensation is available under the Criminal Justice Act.

THE COURT: That application is denied for the reason that I previously stated. We cannot permit lawyers in this court to come in here who have not been paid by their clients and fail to advise the Court that their clients are indigent and then, on the eve of trial, seek to be released on the ground that the client is indignet or secure an appointment under the Criminal Justice Act on the ground that the client is indigent.

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(12 jurors and 4 alternates were duly impaneled and sworn.)

THE COURT: We are going to recess in just a few moments for lunch today and we are going to adjourn court early today because this courtroom is needed for a special purpose, and that will be at 3 o'clock. In just a few moments we are going to recess for one hour for lunch.

Now, before recessing for lunch, I want to give you some preliminary instructions. Now, as I told you earlier, at the end of the case, and that means after all of the testimony is in and all the evidence has been received and the lawyers have had an opportunity to make summations to you, the Court's duty is to instruct you as to the law applicable to this case.

Now, at this time, as I have indicated, I want to give you some preliminary instructions.

The first is that as jurors you are going to be the sole and exclusive judges of the disputed fact issues in this case.

It must be obvious to you that in order to perform that function properly you have to pay careful attention to the testimony and other evidence as it comes in.

Now, if you are falling asleep or letting your mind wander, obviously you are not going to be able to perform that function very well.

We are going to take a morning recess and an afternoon recess once the trial gets under way, in addition to the luncheon recess.

The purpose of those recesses is to give you an opportunity to relax because we know that you can't pay attention indefinitely.

So, you will have an opportunity to relax and not have to concentrate throughout the day but while the testimony and other evidence is being received, jurors must pay attention.

Now, as I told you earlier, in a criminal case under our system, the Government has the burden of proof and that is to prove a particular defendant guilty of a charge made against him beyond a reasonable doubt.

As I pointed out earlier also, in a criminal

case, a defendant does not have to prove his innocence. The defendants are permitted to sit there and say absolutely nothing. They don't have to call any witnesses. They don't have to make any argument. They don't have to testify.

A defendant in our system is presumed innocent and this presumption of innocence remains with him throughout the trial. It remains with him even when you retire to the jury room to deliberate.

Now, the presumption of innocence is removed only if and when, after your deliberations in the jury room, you come to the conclusion at that time the Government has sustained its burden of proof as to that particular defendant--and that is, to prove that defendant guilty as to the particular charge you are then considering beyond a reasonable doubt.

I want to point out now that since this is a multi-defendant case--that is, we have several defendants on trial -- 8, and there are a number of charges, you have to consider the guilt or innocence of each defendant separately and you must find that each defendant is either guilty or not guilty of a particular charge made against him.

I remind you again that an indictment is not proof or evidence.

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As I told you, repeatedly now, the defendants are brought to trial as a result of an indictment which has been returned by a Grand Jury sitting in this courthouse, which has charged them, first, with conspiring among themselves and with others, to violate the Federal Securities Laws.

Now, in addition, they are charged in a number of counts with doing a number of acts which the indictment charges violates other specific provisions of the Federal Securities laws.

Now, as I have said, an indictment merely makes accusations. It has no evidentiary value. It is merely a method or a technique or procedure which we employ in our system whereby one who is accused of a crime by the Grand Jury is brought into court and then their guilt or innocence is determined by a petite jury, or a trial jury such as you are.

During the course of the trial it will be my responsibility to rule on objections and motions made by the defendants.

My rulings on these objections and on these motions will have to do with questions of law and, therefore, are not your concern. Your concern is with the evidence, the facts, the testimony which you will hear from the

witnesses who will take the witness stand, the exhibits which are actually received in evidence and any stipulations as to certain facts which the lawyers may enter into.

Now, I want to repeat that: The jury's concern is with the evidence in the case. That is the testimony that you will hear from witnesses who are going to take the witness stand right here in front of you, so you can see them and hear them and observe them; the evidence consists also of any stipulations or agreements which the lawyers on both sides might enter into whereby they agree that if a witness is called he would testify to certain facts or some other agreement, which they might reach and, in addition, the evidence consists of any exhibits which are actually received into evidence.

So, as I have said, my ruling on any motion or objection made by a lawyer has to do with a question of law and these motions and rulings really concern, to put it simply, the running of the trial, kind of housekeeping matters as we go along.

I want to caution you that my ruling on any objection or motion is not to be construed by you as any indication that the Court believes that the defendants are guilty or not guilty or that the charges made against them are true or false.

Again, these rulings have to do with questions of law and not to the ultimate decision which you have to reach as to the guilt or innocence of a particular defendant.

Now, as the evidence comes in, you will want to keep an open mind until you have heard the whole case.

Now, that means, as I said last evening, that you are not to discuss the case among yourselves at any time for any reason until you have finally retired to the jury room to deliberate.

That means you are not to discuss the case with your family or your friends when you go home at night, because if you do that, the first thing you know, somebody will start telling you about something they read in the newspaper or saw on the television or heard on the radio and although you do not intend it, those discussions may influence your judgment here and, as I told you repeatedly now, your judgment in this case must be based solely upon the evidence presented in court in this case and not on what somebody heard on the radio or saw on the television or read in the newspaper.

So, please do not discuss it with anyone when you go home at night.

Now, again, because you have to keep an open

mind, I want to remind you that you are not to read any newspaper stories or listen to any television reports or radio reports regarding this case. If you should do so, inadvertently, when you come in in the morning do not discuss that with your fellow jurors and make them aware of what you have heard or seen. You let me know immediately through the clerk of the court if I am not in the courtroom and he will contact me and I'll discuss it with you.

Should anyone telephone you or accost you in the halls about this case, don't tell your fellow jurors about that either, but let me know immediately and we will take it up.

Now, the clerk is here to answer any questions concerning your comfort or convenience and he will try to resolve any problem which you will have along those lines.

If he can't, he will take it up with me.

Now, this is an important case to both the defendants who are on trial and to the Government.

For that reason, you must pay careful attention throughout the trial and follow the Court's instructions as to the law.

I want to remind you that we all have a stake in the fair and impartial administration of justice in that trial by jury is a basic and cherished institution in our

system.

Consequently, when you sit on a jury you are playing a vital role in the administration of justice.

I'm sure that you want to give the defendants and the Government -- that is, the parties who are now on trial -- the same fair trial which you would expect if you were a litigant in a lawsuit.

Now, no litigant in a lawsuit gets a fair trial if the jurors are not paying attention, when they come to court late and when they do not follow the Court's instructions as to the law.

I want to urge you again, to pay careful attention to the testimony and other evidence as it comes in. Come to court promptly each morning, after an evening recess and in returning from a recess during the morning or afternoor or in returning from a luncheon recess.

After the luncheon recess, which we are about to take, the trial will commence with an opening statement by the Government's counsel and that's very important and I want you to listen carefully to the Government's opening statement because the purpose of an opening statement is to give you a kind of overview of the evidence.

Now, it must be clear to you that the evidence in a case of this kind cannot be presented all at one time.

It will come in in bits and pieces through various witnesses and through documents and other evidence which is received into evidence and, so, in its opening statement, the Government is going to give you an overview, as I have said, of what it hopes to prove so that as the evidence comes in you will be able to follow it better.

Now, after the Government has made its opening statement, it may be that some of the defendants would want to make an opening statement and again, I want to point out that they are not required to make any opening statements but they may do so if they wish and the purpose of their opening statement is to give you an idea of what they expect to prove or what their contentions are.

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Now, with respect to statements made by lawyers--that is, their opening statements, during the course of the trial and at the end of the trial, when each lawyer will have an opportunity to sum up to the jury -- I want to caution you that statements made by lawyers are not evidence.

The evidence in a case, again, consists of the testimony of the witnesses and any stipulations that the lawyers may enter into and any documents which are actually received in evidence.

Statements made by lawyers are not evidence.

Now, at the end of the trial, as I have said, the lawyers are going to have an opportunity to make a summation and the purpose of that is to give you their views as to what they believe the evidence shows or does not show, and as to that, I want to remind you that it is your recollection of what the evidence shows which controls and not the lawyers'.

All right, at this time we are going to recess until 12:45 for lunch.

The jury is excused.

Before you go to lunch, I want the clerk to take you to the jury room and show you where that is and when you come back from lunch, and when you come in in the

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morning, you report to the jury room and you wait there until the clerk brings you in.

Now I want to point out that there will be times, perhaps, when we will get started late in the morning because I have legal matters to discuss with the lawyers out of your presence.

You don't know when we are going to finish and it will not happen every morning but you are not permitted to be late on the belief that we will not be starting on time. We are required to start court on time and no juror is permitted to be late coming to court.

So please bear that in mind. You report to the jury room and you remain in there until the clerk brings you to the courtroom.

Did you have something to say before the jury is excused?

MR. WOHL: No, your Honor. We can take care of it later.

MR. HIGGINS: I wanted to raise the one point with respect to your instructions to the jury. I can do it at the side bar, if your Honor please -

THE COURT: All right.

(At the side bar)

MR. HIGGINS: Your Honor, I feel I must take

exception to your Honor's instructions to the jury with respect to opening statements, particularly the opening statement of the Government in which you--

MR. WOHL: May we ask that counsel keep his voice down?

THE COURT: All right.

MR. HIGGINS: In which your Honor instructed the jury that the Government's opening statement was a very important-- may I finish?

MR. WOHL: I must say --

THE COURT: Let him finish, please.

MR. WOHL: I think he is talking loud enough so the jury can hear.

MR. HIGGINS: In the instructions, your Honor, you instructed the jury that the Government's opening statement was very important and instructed them to pay close attention to it in that in the opening statement the Government would state what it intends to prove.

Your Honor has sat on many cases and typically the Government's opening statement is conclusory; it characterizes what the evidence will be and does not really state what the evidence, in fact, is.

We feel, your Honor, even though you did give some cautionary instructions afterwards that statements of

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an attorney is not evidence, that the way your Honor did present it to the jury, they should give some special significance to what Mr. Wohl will be saying and unless your Honor chooses to recast the instructions to the jury, I feel I must make an objection to the instructions as given.

THE COURT: Anybody else want to make an objection to the instructions thus far given?

MR. KEEGAN: Your Honor, I understand for all motions we are all considered to be joined, unless stated otherwise.

THE COURT: Yes.

MR. WOHL: We only have one minor point and that is that when your Honor told the jury that what lawyers said was not evidence, it tended to exclude a problem we have in this case wnich is that we have two pro se defendants and I would think that it would be appropriate to tell them that if the pro se defendants say anything, that that is not evidence either.

THE COURT: Well, I think I have already told the jurors that the evidence in the case consists of the testimony, the exhibits and the stipulations and I think I told them that at least three times.

(in the presence of the jury)

THE COURT: The jurors are excused now until

a quarter to one.

Everyone remain seated until the jurors have left the courtroom.

(Jury left the courtroom)

MR. KEEGAN: Your Honor, may I address the Court?

THE COURT: Yes.

MR. KEEGAN: I have two requests and I really haven't had a chance to discuss them with co-counsel, so perhaps some of them will not agree with the request, even if the Court granted them.

The first has to do with the order of the opening statements.

Because of the obvious distraction of opening today when the defense doesn't go on for three weeks, I request the Court, if the Government doesn't object, to adopt the procedure used in the recent Watergate case, namely, to allow each defendant attorney to open immediately prior to opening his case to the jury, rather than at the outset of the trial.

THE COURT: All right.

Any objection from the Government?

MR. WOHL: No, your Honor.

THE COURT: Any objection from the other defendants?

MR. FISCHETTI: Your Honor, does that remain our right that we may open right after Mr. Wohl, if we so choose, if some of us decide that we may open today?

MR. KEEGAN: I phrased it that way; we have the option.

THE COURT: All right. We will leave it that way.

MR. KEEGAN: Was the motion granted?

THE COURT: Yes. That will be allowed.

I'll explain it to the jury that some of the defendants may want to reserve their right to make an opening statement after the Government has concluded its case.

MR. KEEGAN: Thank you.

The second one, it may be premature, it has to do with the order of the closing.

Judge Frankel occasionally asked the Government, if it doesn't object,to go first and the defense follows and then it is time for rebuttal.

I would request that procedure be adopted, if co-counsel don't object, and if the Government agrees.

THE COURT: The Government go first?

MR. KEEGAN: On summation, followed by defense summations and then rebuttal by the Government.

MR. FISCHETTI: Those are the new rules that

come into effect in 180 days, that that is the way it will work.

THE COURT: That the Government will go first and the defendants second and then rebuttal?

MR. FISCHETTI: Yes. And the Government has an opportunity only to rebut what the defense has said in summation.

MR. HIGGINS: That is the practice in several other districts around the country, your Honor.

MR. ROBSON: Judge Bonsal,who apparently is in charge of a committee which is considering this question for this district,indicated only a few weeks ago at the conclusion of a trial that he felt very strongly that that was the best way to do it and he was going to very strongly urge the balance of the judges in the court to adopt that informally, even in the absence of the rule change.

MR. KEEGAN: Judge Frankel does use it and has used it in the Sweig case, if the Government doesn't object.

THE COURT: Does the Government object to that proposal?

MR. WOHL: May I have a moment, your Honor?

THE COURT: Yes.

(Pause)

MR. WOHL: Your Honor, if all defendants request

that, the Government would not object to it.

MR. KEEGAN: Does any defendant object?

MR. ANDREWS: No objection.

MR. KEEGAN: No objection, your Honor.

MR. FISCHETTI: No objection.

MR. WOHL: As I understand it, the suggestion is that the Government give the first summation and then all the defendants give their summations and then the Government has an opportunity to rebut after that.

MR. KEEGAN: That is correct, your Honor.

MR. ROBSON: Yes.

THE COURT: All right.

Is there anything further?

If not, before you go, I would just like to make a chart here for myself of the order in which you are sitting so that I can get everyone correctly placed with the name.

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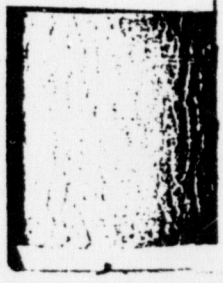

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AFTERNOON SESSION

12:55 p.m.

THE COURT: Mr. Wohl, are you ready to proceed with your opening statement?

MR. WOHL: I am, your Honor.

Madam Forelady, ladies and gentlemen of the jury, your Honor, counsel; Mrs. Harris and I and Mr. Schatz of the SEC regard it as a great privilege and honor to represent the United States in this case before you.

Basically, this is a case in which the Government charges that the eight defendants here on trial put together, planned and carried out a major security swindle of a volume of at least a quarter of a million dollars.

Basically, ladies and gentlemen, the charges are, first of all, that the defendants conspired to do this-- that is, they agreed to do it -- and with regard to that the question is whether they agreed and carried out acts in furtherance of the agreement entirely separate from whether their swindle was ultimately successful.

Secondly, as a major group, the Government charges that indeed they did carry out acts, they committed substantive crimes individually, which carried out the swindle that they conspired to perpetrate.

Now, what kind of securities frauds are we going

to be talking about in this case?

The Government charges first of all that these defendants conspired to, and in fact did, with respect to some of them, transport and use the mails in connection with the sale of unregistered stock.

Now, not all the defendants are charged in every count and I am going to get to that in a few minutes but by and large the charge is they conspired to and they did sell unregistered stock using the mails, and also interstate commerce and transportation facilities to do that.

In addition, and separately, ladies and gentlemen, they used fraudulent and deceptive devices and contrivances in order to affect the price of that unregistered stock that they sold to the investing public.

Finally, ladies and gentlemen, the evidence is going to show that some of the defendants misrepresented, fraudulently, the status of that stock in order not to sell it to the investing public but instead in order to pledge it at a bank so that a loan would be made by the bank on false information concerning the status of the stock.

Now, ladies and gentlemen, the Government is going to charge and has charged and we expect we will prove in this case a scheme that involves a number of parties.

One person cannot do the entire thing. Consequently, the Government is charging,in addition,that a number of defendants aided and abetted in the schemes that were actually performed primarily by other defendants; that they aided and abetted by performing required and essential elements of the crime actually committed by other defendants and, in addition, ladies and gentlemen, the Government is charging in some instances that the defendants caused other persons to do acts which were in violation of the law.

This particularly comes up in some areas where le4tters are mailed, phone calls are made and other things of that sort.

The Government is charging that these letters or forms that are mailed or phone calls that were made were caused by the defendants here on trial.

Now, we have used the term "fraud," ladies and gentlemen.

What is fraud? The Government charges here basically that the defendants combined in an unlawful scheme, the ultimate object of which was to take other people's money -- not violently, not at gunpoint, but rather unlawfully, through the use of false and deceptive devices, through the use of fraud-- in other words, trickery.

You are not going to see a case here, ladies

and gentlemen, where there are going to be any dead bodies or actual physical assaults or any violence.

In addition, you are not going to see where there is just going to be one victim who is going to come in and say that "I lost a quarter of a million dollars as a result of this scheme."

That's not the way this type of scheme works, ladies and gentlemen.

What the Government has charged here is that these defendants combined to put together a scheme that was going to net them a massive amount of money, that they were going to collect from lots of little individual investors, who were sometimes careful, sometimes not so careful, frequently -- in fact, they generally were investing to make money for themselves.

The Government charges that these defendants used unlawful devices in order to accumulate that money from those investors.

Now, we have been talking about securities and stocks.

It is worthwhile looking for a moment at what a stock or what a security is.

You know, of course, businesses are sometimes organized in corporations and there are public corporations

and private corporations.

Now, a public corporation, the evidence is going to show, is a corporation in which the owners are the investing public in large part and those stocks are traded out among different people.

That's in contrast to a private corporation which might be a little company that is formed by a group of people who are friends, who are relatives, and they don't trade the stock with other people. All they do is perhaps hold the stock because they are also the managers of the company, perhaps they trade maybe once in a while just to each other, but that's not a public corporation; that is a private corporation.

So we have the concept which you are going to hear about of going public. In other words, one of these little private corporations decides that it wants to become a public corporation and sell its stock to the public.

Now, when it does that, ladies and gentlemen, that normally means that each of these investors then owns a piece of that company, it owns some shares of stock and how is that represented? That gives those people certain rights with respect to the company.

What did they have? Did they have a typewriter or a room in the company's building? Of course not.

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What they have oftentimes are stock certificates or rights to stock certificates which may be held by their brokers and what can they tell from a stock certificate?

Well, the answer is not very much, ladies and gentlemen. You have probably all seen stock certificates.

If I had one here you would recognize that it is merely just a sheet of paper and it may say something on the piece of paper, but it is not very likely to tell you how much it is worth. It is not like a $10 bill so that everybody knows how much that stock certificate is worth.

It might be a thousand shares of IBM. On the other hand, it might be two shares of XYZ Corporation that nobody has ever heard of before and what you pay for it and what it is worth would depend substantially on, first of all, what company it is and, secondly, and how many shares you are talking about.

Those are things that are actually written on the piece of paper but in addition, going beyond what is written on the piece of paper, you would have to know a substantial amount of information about the company involved. Because even when you look at a stock certificate, it is not like buying the kind of thing that most of us ordinarily buy so that we can tell the value of it based on our own experience and in our daily lives.

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It is not like a television set, for example, where you go into a store and you can turn it on and look at it and see what you think it looks like, whether the reception is any good, perhaps talk to the persons in the next house or the next apartment that has the same kind of television set,may be talk to a repairman and see how they are working; or a used car, you can't drive it around the block.

It is just quite a bit different. It is a special kind of commodity.

And even if the ordinary person were to be very conscientious about this and go off shopping in a rather aggressive way, you can all see that it is fairly unlikely that the ordinary person could make any kind of investigation that would be appropriate before making a commitment like investing in stock.

For example, it is not very reasonable to expect that the ordinary investor is going to go visit the company and meet the management and talk over things with the managers of the company; look over the books and records of the company, go into the bookkeeping department and check out the sales for yourself.

That's not the kind of thing that the ordinary person can do. It is not the kind of thing that the

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ordinary person can do, for example, to talk to competitor companies and see whether they are going to run this little company out of busines; it is just not very reasonable,is it?

In addition, even suppose you could do that, you have to verify the information you are talking about so when you go to the company and theysay, "We made $3 million in sales last year," is the average investor in a position to go over those books and records and see whether the company really did make $3 million in receipts, and even if the books and records of the company show that, is the average investor in a position to go talk to all of the people who were supposed to have paid that $3 million and find out if they really did pay the $3 million to the company?

The average investor is not in a position to do that either, ladies and gentlemen.

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In addition, ladies and gentlemen, the average investor is not in a position to evaluate what the company's managers tell the person or might tell the person about what the company is going to do.

For example, if the manager said, well, we are going to make an acquisition or we are going to do this, we are going to stand here and there, how is the average investor to know whether that is just somebody's pipe dream in order to tell you about selling stock or hoping you buy stock or whether they really have some plans to do that.

MR. HIGGINS: Your Honor, if I may, I am constrained to interrupt Mr. Wohl's opening statement but really it was our understanding that the purpose of an opening statement is to have some idea as to what the Government's evidence would be and not to have a lecture on what should or should not be disclosed vis-a-vis financial investments.

I thought Mr. Wohl was going to give us some idea as to what his evidence would be and this goes in line with the objection I made at the side bar vis-a-vis your Honor's instructions to the jury.

THE COURT: Mr. Wohl?

MR. WOHL: I think I am entitled to explain to

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the jury what the laws are or the background of them, that we are dealing with here, because if they are to look at unregistered stock, if they are generally jurors, they have no idea what unregistered stock even is.

THE COURT: Yes. You may proceed.

Objection overruled.

MR. ANDREWS: May I be heard, your Honor. I too, -- I am sorry, Mr. Wohl.

I understand that the Court's function was to instruct the jury on the law and not the prosecutor or any of the defense counsel. If he is going to instruct on the nature, impact and import of the law, I, too, object, your Honor.

That seems to be what he is doing.

MR. WOHL: Merely telling the jury what the Government's charges are in the case.

THE COURT: Yes. Proceed.

MR. WOHL: Consequently, ladies and gentlemen, you can see you have a special problem here and consequently there are special laws to deal with that problem. Those laws are called the Securities Laws.

In addition, there is a special agency that deals with those laws on behalf of the Government, and you are going to hear reference to it. It is called the

Securities and Exchange Commission, ofttimes referred to as the SEC.

Now, these are the laws that the defendants by and large here are charged with having violated and the laws generally require that people who want to issue stock to the public file a registration and that's what comes from the term "unregistered stock."

They have to register the stock and, in connection with the registration statement, they have to file a proposed prospectus that would be issued to the various investors and the Government expects to establish in this case that this type of prospectus is, indeed, the fundamental document of investor protection that allows the individual investor, who can't go around and do all of these things, to have some kind of disclosure from the company, some kind of verified disclosure in writing so that if he wants to know about that company, he can either check that prospectus or more likely his broker can check that prospectus and tell him, 'Well, the prospectus says thus and so and it's in writing there, so it can't be changed and it would normally include, with respect to show, financial statements of the company that are verified or audited financial statements by accounts who have checked into these things and, in addition, it would show a description, a

true and honest and complete description of what this company's business really is.

It would tell who the officers are and what the corporate history is.

Obviously, it is part of the law that that kind of statement must be truthful and complete so that the investors and their representatives, their advisors and their brokers are honestly informed about the company.

Now, you have to understand, ladies and gentlemen, this law would not apply to every sale of stock. For example, just a private sale. It applies to public distributions and the Government charges in this case that indeed a public distribution did occur, that is, that there was a company or an issuer of stock and that some of these defendants were connected with that company and that there was an underwriter -- that is, someone who took the stock with an eye toward public distribution of the stock, who wanted to sell the stock and the Government is charging in this case that some of these defendants here on trial were indeed underwriters of this stock and participated in a distribution of it to the public, without any registration statement whatever being filed with the SEC.

And of course, in addition, they are charged with conspiring to do exactly that.

Now, let me be specific. The Government charges that Messrs. Rubinson and Feiffer and Chester and Reynolds, along with another defendant named Stein. actually transported unregistered stock in interstate commerce in connection with the sale of that stock and, in addition, that they used the mails or used the mails to be used in connection with the unregistered sale of that sock, and aided and abetted in doing so.

The Government charges that they did this wilfully and knowingly; not that they did it unknowingly, or ignorantly, not knowing what the requirements were, but rather they did it wilfully and knowingly.

What that means is nothing that what they were doing was in violation of the securities laws or just in a complete and utter reckless disregard of whether or not what they were doing was lawful.

Now, there is a related crime that is also charged, ladies and gentlemen, and in order to understand that, I have to explain a little bit more about this concept of registration of stock.

It comes up not only when a private company is going to go public, but in another circumstance.

The law has recognized that you may have a situation where some insiders or controlling persons, people who

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are, say, the managers of the company and own most of the stock of the company, instead of just issuing the stock like a normal public offering, will just want to start selling their insider stock to the investing public based on what they know about the company, but not what the investing public knows.

Consequently, there is a general requirement that some of these defendants are charged with having violated, that if a person is a so-called control person, one of these insiders, that he can't go around selling his stock to the investing public without registering that stock and putting in one of these registration statements with a prospectus attached.

MR. ROBSON: If your Honor please, I dislike intensly interrupting Mr. Wohl, but I would like to expand on the objection that was previously made. Not only do I object to Mr. Wohl making statements of what the law supposedly is, but in this situation I object because the statements are completely inaccurate and I really think that it is not Mr. Wohl's function but your Honor's, to tell the jury what the law is.

THE COURT: I've already told the jury that.

MR. ROBSON: Mr. Wohl is making inaccurate statements of the law and I think it's inappropriate for him

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to be making any statements of what the law is.

THE COUPT: Overruled.

Proceed.

MR. WOHL: What the Government charges in this case, ladies and gentlemen, is that there were several control persons in this situation, particularly the defendants Rubinson, Feiffer, Chester and Reynolds and that during the course of the activities that you are going to se see during the course of the trial, that they knew that the stock that was registered in certain names was restricted stock -- that is, as it is sometimes called, investment stock, but notwithstanding that fact, they sold it in a distribution to the investing public.

Now, in addition, ladies and gentlemen, this question of investment stock is going to come up at another point and that's this. You can have situations where the company can make private sales of stock, not to the investing public, but then the person who buys the stock receives investment stock and sometimes, as the proof will be in this case, files an investment letter saying he is not going to sell the stock.

Now, that stock, the proof will show in this case, usually has a lower value than freely tradeable stock and one of the charges in this case or actually two of the

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counts relate to the activities of defendant Gardner, aided and abetted by defendants Rubinson and Chester, in that defendant Gardner received this investment stock, took it to a bank in Montreal, Canada, known as S.F.C.I., and pledged it to the bank without telling the bank that this was investment stock but instead telling the bank that this was freely tradeable stock, so that later when Mr. Gardner defaulted on the loan, the bank was stuck with this investment stock, which had a lower value than freely tradeable stock and the evidence is going to show in this case --

MR. HIGGINS: Your Honor, I object to that, both in terms of facts, but that would be developed later at trial but also in terms of what the bill of particulars in this case disclosed.

The Government in the bill did not allege that there was any sale by Mr. Gardner to the bank of this stock in question, and I object to Mr. Wohl's characterizing that at this time.

THE COURT: I don't know that he is characterizing it as a sale. I thought he said he pledged it.

MR. WOHL: That's right.

THE COURT: As a loan. Overruled.

MR. WOHL: Consequently, ladies and gentlemen, the charge with respect to Mr. Gardner is not that he sold the stock but, rather, used it as collateral for a loan, by fraudulently using it as collateral, because he took some stock in and said, "This has a certain value because it is freely tradeable stock and you, Mr. Banker, can go sell it on the public market." But later, when Mr. Gardner defaulted on the loan, didn't pay the bank, the banker tried to sell it and found it was restricted stock and since the interstate wire communications, and in fact, foreign wire communications with Canada were used to accomplis that transaction, the Government has charged that is a violation of the Federal Wire Fraud Statute.

That completes, ladies and gentlemen, the area of charges that relates to unregistered stock. The Government, however, has charged that these defendants had a second objective in their conspiracy and in their criminal enterprise, and that second objective, of course, is affecting price of the stock, because you really haven't accomplished very much in your going around selling unregistered stock and it is selling at a penny a share, but the profits are naturally increased to the point where you can sell that stock for a price of several dollrs per share. And the Government charges in this case that the defendants did

that through fraudulent -- that is, they affected and controlled the price of the stock through fraudulent and deceptive devices and contrivances in violation of the securities laws.

The gist of the Government's charge is that the defendants used fraudulent mechanisms to control the supply and demand for the stock.

As I am sure many of you know, the normal laws of economics work with securities, like anything else, and if the supply of stock is increased, that is, everybody wants to sell that stock and it is hitting the market, that causes the price to go down.

On the other hand, if the supply of stock is restricted, if somebody controls the entire supply, that would be likely to cause the price to go up as long as nobody sells the stock.

In addition, if there is a lot of demand for the stock, that will cause the price to go up because everybody wants to buy it and there is only so much to go around and they say "I will sell it to you for a higher price and if you don't want to buy it, I will sell it to somebody else."

Nobody wants to buy it, then the price is more likely to stay low.

The Government is charging that there were

these artificial devices and contrivances to affect the price of the stock and that they included omissions of material facts. I think it is important to focus on the fact that the Government is generally not charging in this case that the defendants actually told lies, that they made false statements about the company that was involved here but, rather, is charging that they omitted to state material facts, that is, of course, except for the defendant Gardner where we charge he did improperly represent the stock to be tradeable stock.

By and large, the Government's charge is that there were situations where there were fraudulent devices going on where people who had a responsibility to tell investors about and say "Hey, the price is up at a certain level, but it is really up there because we are using all these devices to rig the stock" didn't tell anybody about that and people bought the stock thinking that the price was a true price rather than this artificially manipulated price.

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What kinds of artificial manipulations are we talking about?

For one thing, ladies and gentlemen, the Government is charging that the defendants Rubinson and Feiffer and another defendant names Stein paid kickbacks or bribes to the defendants Levine and Wax and that the defendants Levine and Wax took that money in return for creating a market in the stock, on the one hand, and selling it out to their investors or clients -- particularly, the defendant Wax sold it out to his investing clients without telling anybody they were getting these extra payments or kickbacks,and you can see that if a broker, a professional in the securities industry, is getting special payments for just dealing with one stock that he is not getting if he sells somebody AT&T or General Motors or IBM, that creates an incentive for that person to call the investors and say, "I think it is a good idea to buy XYZ Company" and the person does not know the broker is getting an extra payment.

In addition, it is charged the defendants used interstate wire and transportation facilities in connection with that activity.

The Government also charges in this regard that the defendant Gardner participated in this scheme by listing

the stock in some publicly used sheets, which are called pink sheets, and that he listed the stock in these pink sheets at increasing prices and helped the stock move up.

The Government genrally does not charge, as it charges Levine and Wax, with making substantial sales of the stock.

The Government does not charge the defendant Gardner did that, but rather that he helped the stock go up through the use of these pink sheets and then received his compensation in other ways.

In addition, the Government charges that the defendant Haskell participated in this scheme and expected to profit from it. The defendant Haskell participated, in part, by furnishing the company-- the company, Stern-Haskell, which Mr. Haskell partially owned, and the defendant Chester participated through the distribution of unregistered stock.

In other words, he furnished the stock relying on the fact that these other defendants were going to create this public market for the stock.

Those are the charges, by and large, basically, ladies and gentlemen, that the Government expects to establish in this case and we expect the proof to show that these events occurred primarily during 1968 and 1969.

The areas, the geographical areas, primarily involved, were Florida and New York, and it may be sort of helpful in your keeping track of the proof to group the defendants into different geographical areas.

We expect the proof is going to show that the defendants who operated primarily, although not exclusively in Florida, were the defendants Chester and Reynolds.

In addition, the Government expects to show that certain of the defendants operated primarily in the New York financial community and they are Levine, Wax, Gardner and Kaye, another defendant who is not here on trial.

In addition, there is the defendant Haskell, who operated or participated in the operation of the company, Stern-Haskell. He is located in the Bronx, New York.

Finally, ladies and gentlemen, there are three defendants, Rubinson, Feiffer and another defendant not here on trial named Stain whom the Government is going to show were traveling back and forth, spending their week days in New York, going on weekends back down to Florida and sort of commuting back and forth all the time in part so that they could keep track of both areas of operation.

It is important to start at the beginning by recognizing the Government expects to show that all of

these defendants, with the possible exception of Mr.Haskell, were professionals in the securities business.

They were very knowledgeable about the securities business and had a substantial background in it.

Indeed, the evidence is going to show that Mr. Chester was a lawyer, in addition to his connections with the securities business.

The first phase in terms of time that the Government is going to establish occurs down in Florida, in late 1968 and early 1969. And that Phase I, you may call it, or the underwriting phase, is when defendants Rubinson, Feiffer, Chester, Reynolds and Stein, as the evidence will show, basically set up an underwriting business, the idea of which was to distribute unregistered stocks to the investing public, of course, without filing any registration statement.

The name of this business, the evidence is going to show, was National Ventures. Sometimes it was called a company that dealt in real estate; other times it was called a company that bought and sold stock, but the evidence is going to show, ladies and gentlemen, that it had no significant business other than the buying and selling of these unregistered stocks and the distribution of them to the investing public.

The evidence is going to show, ladies and gentlemen, that this was a company primarily operated by the

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defendant Chester, but in addition, by the other defendants I have named.

The evidence is also going to show that in February of 1969 they agreed, along with the defendant Haskell, Jerome Haskell, that the company Stern-Haskell would be one of the companies that they would distribute, whose stock they would distribute to the investing public without filing a registration statement.

The evidence will show that at that time the company Stern-Haskell was a wholeale used car dealer located up in the Bronx, that they were going to turn into a public company; and that defendant Haskell was one-half owner of that company.

Prior to this time, of course, it was an entirely private company owned basically by three shareholders; that they wanted to sell the stock to the public without the filing of a registration statement.

So the evidence is going to show that in February and in March of 1969 they transferred 200,000 shares of this stock to National Ventures, the company down in Florida; and that National Ventures distributed that stock to the investing public, or initiated the distribution, in any event.

The evidence is going to show that in March and

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April, 1969, the defendants Rubinson, Feiffer, Chester, Reynolds and Stein, the underwriting group basically divided the stock up among themselves. They didn't want anybody else to be selling the stock, they wanted to be selling the stock themselves, and get the profit for it.

Incidentally, you will notice that the Government is going to establish,as I may have impliedly said already, that the Stern-Haskell Company didn't get any money.

It wasn't like a normal public offering where the company gets money. They didn't get any money.

The evidence is going to show that these defendants divided up the stock and parceled it out, but they didn't want to hold it in their names entirely.

Defendants Rubinson, Feiffer and Stein agreed to have their stock listed in nominee names; and those names were four different names that you will hear about during the trial, one of which was Mr. Feiffer's name. He agreed to have the stock in his name. The other names were Weitzman, Hochen and Silber.

In addition, ladies and gentlemen, the defendants Reynolds and Chester agreed that their stock would not be listed in names that actually reflected who was the real owner of the stock, but rather, they were going to have the stock listed primarily in Mr. Reynolds' name, and the evidence

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is going to show, ladies and gentlemen, or we believe you will be able to infer from the evidence, that Reynolds and Chester had a basic understanding that because Mr. Chester was a control person and could not openly and notoriously sell the stock to the public without that being obviously illegal, what they decided to do was put all the stock in Mr. Reynolds' name, or the stock that they were going to own together. Then Mr. Reynolds would go sell the stock and give some of the money to Mr. Chester, so Mr. Chester would be able to participate in the proceeds without having an obvious--

MR. CHESTER: May I have a minute, please?

Judge, there is nowhere in the indictment which charges a separate conspiracy between Mr. Chester and Mr. Reynolds,a conspiracy to sell the stock, what he is talking about now. I don't see anything in the indictment as to that.

Is he talking about a separate conspiracy now between Mr. Reynolds and Mr. Chester?

MR. WOHL: I believe the indictment charges the use of nominee names and, in addition, your Honor, we have charged, if I am not mistaken, it is count 14, their sale of unregistered stock, and I think that this comes within that, certainly.

THE COURT: Count 14 concerns the transportation in interstate commerce of unregistered stock.

Is that what you have reference to?

MR. WOHL: Yes, your Honor.

What the Government expects to show there is that Mr. Chester always recognized that he could not sell any stock, and so that stock was listed in Mr. Reynolds' name. They brought the stock to New York, sold it here in New York, and then the proceeds were given to Mr. Reynolds, who turned over some of the proceeds to Mr. Chester.

THE COURT: All right.

MR. CHESTER: My motion is denied, your Honor?

THE COURT: What was your motion?

MR. CHESTER: I think he is talking about something that is not in the indictment.

THE COURT: He's just explained it. Overruled.

MR. WOHL: Ladies and gentlemen, the Government is going to submit to you that you will be able to infer from the evidence, of course, that if people, when people are using these nominee names, that means that by and large they don't want their names associated with this particular transaction, and indeed, you are going to find that as far as the stock that is sold goes, none of the documents are going to have Mr. Rubinson's name on any of -- on any sales of stock at all, nor will they show Mr. Chester's name on the sale of stock.

And so the Government is going to submit that you will be able to infer at the close of the case that indeed people were selling on behalf of Mr. Rubinson and Mr. Chester, and also in addition, Mr. Stein, whose name never appears on any stock that was sold, for their benefit.

And in addition, the Government will submit to you that there will be another reason why they would use nominee names, and that is, as I have already explained to you, this concept of a control person, if they just said all the stock was owned by Mr. Chester, that would make him an overwhelming holder of Stern-Haskell stock and none of the stock could be sold --

MR. CHESTER: Judge, he is stating that there is

no stock certificate ever in the name of Mr. Chester and he is holding right there in his possession a stock certificate, the only one I ever had, for 58,000 shares, with my name on it, and he is telling this jury that no stock certificate was ever in my name, which is an absolute untruth.

THE COURT: Mr. Chester, I have already advised the jury that in an opening statement the Government is simply outlining what it expects to prove, and at the end of the case the jury would have to find that the Government has proved what it said it would prove.

So it is unnecessary for you to interrupt and say that that is not so. The jury is going to have to make a determination at the end of the whole case.

MR. CHESTER: Thank you.

THE COURT: Is their somebody else who stood up?

MR. KEEGAN: No, your Honor. I had stood up, and sat down again.

MR. WOHL: Just so it is clear, ladies and gentlemen, the Government is not saying there was never a stock certificate in Mr. Chester's name. What the Government is saying is there were stock certificates in Mr. Chester's name or at least one, but that stock certificate was never sold, so that Mr. Chester can come into court and say to you, here's my stock certificate, it was never

sold.

The point is, he had interest in other stock certificates --

MR. CHESTER: Again, I am objecting. He is suming up. I don't mind him telling what his evidence will show, but to start now to emotionally tell the jury what Mr. Chester is going to come in and tell them, I don't think is fair.

MR. KEEGAN: Your Honor, I join in the motion. What Mr. Wohl is now telling the jury is what he hopes they will infer when all the evidence is in, and that is not his purpose in the opening. He can argue this in his closing but until he gets the evidence before the jury, it's unfair for him to infer this or that. It's unfair for him to infer what Mr. Chester or what Mr. Rubinson had in mind.

THE COURT: Objection overruled.

MR. ROBSON: May we approach the side bar, because there was something that shouldn't be said in front of the jury with respect to a statement by Mr. Wohl.

THE COURT: All right.

(At the side bar.)

MR. ROBSON: Your Honor, Mr. Wohl just stated to this jury that Mr. Chester did something so that he can come into court and testify. Mr. Chester is a defendant

who is not under any obligation to testify, neither is any other defendant in this case. It has now left with the jury an impression that somewhere or other Mr. Chester and perhaps the other defendants have an obligation or have indicated that they are going to testify. At this point I have no idea whether Mr. Chester will testify nor do I have any such idea with respect to any other defendant.

I think that that statement is improper and I move for the withdrawal of a juror.

MR. HIGGINS: I join in that motion, your Honor.

MR. FISCHETTI: We all do, your Honor.

THE COURT: That is denied.

Gentlemen, we are not going to have a general trek to the side bar with respect to objections and motions. We are taking these out of the presence of the jury.

(In open court.)

MR. WOHL: Ladies and gentlemen, at the end of this phase of the proof the evidence is also going to show that these defendants left very, very small numbers of shares that were distributed out to other people who may or may not have been connected with them. But the evidence is going to show that the overwhelming bulk of this stock of Stern-Haskell was held in the hands of these defendants and their nominess.

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The Government will also establish that some of the names of the nominees used by Mr. Chester and Mr. Reynolds would be a Francis Roberts, whom the evidence is going to show was Mr. Chester's former wife. In addition, an Andrew McCay, and also a company called Marinus Laboratories. Those are going to be names of companies that the Government will establish were companies or names that were controlled by these defendants and the stock was just put in those names. That completes the first stage or the underwriting phase of the proof.

The second major stage, ladies and gentlemen, is going to be a stage that you could refer to as the distribution and marketing phases of the proof that is going to be before you. The evidence obviously will show that the defendants, as I said before, didn't want this low priced stock for a penny or two pennies a share; that there was an interest in selling it for several dollars per share, and that the defendants Rubinson, Feiffer, Chester and Reynolds, along with another defendant, Stein, wanted to sell the stock in a controlled market. The key, obviously, was the price of the stock; and the evidence is going to show that the first thing that occurred was that the defendant Gardner started listing the stock in these sheets called pink sheets that are distributed to all of the over-the-counter brokers--

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incidentally, perhaps I should have told you earlier the evidence is going to show that this market was not on the stock exchange, it wasn't on the New York Stock Exchange or the American Stock Exchange; this was an over-the-counter market, and the defendant Gardner listed the stock in these sheets that go around to all of the over-the-counter brokers, called pink sheets, and that he started at a dollar per share and he just moved the price up without any trades at all, to $2, and then even higher.

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In addition, ladies and gentlemen, the evidence is going to show that the defendants Rubinson, Feiffer and Stein made a deal with the defendant's Levine and Wax that the defendants Levine and Wax would take care of what you might call the wholesaleing and retailing operation of this conspiracy to distribute this stock to the public, and you recall Levine and Wax are people who are here in the New York financial district.

The evidence is going to show Mr. Levine was the chief trader of a securities firm named Lockwood and Company and as to matters of what stock they would deal in and what their buying and selling would be, he had absolute control.

In addition, the evidence is going to show that the defendant Wax was a registered representative at a company called A. T. Brod & Company, and that means basically he was a customer's man, advised individuals as to what stock to buy and sell and he would execute their orders for them.

They agreed, the evidence will show, to take care of the wholesaling end of this and also the retailing end. But, ladies and gentlemen, the evidence is going to show that they did not do this solely at the risk of whether Stern-Haskell stock was a good stock or not, but, instead,

had an agreement to get secret cash and stock kickbacks, to make it a sure thing that they were going to get a profit regardless of how the public investors did.

The evidence is going to show they did this in basically two ways.

First of all, they would control the supply of the stock. That is, Mr. Levine, in the wholesale area, through his company, Lockwood & Company, would make sure to buy up all the stock and he would control it all. And then they also agreed they would take care of promoting the demand for the stock, and they did this primarily by recommending it themselves in return for the secret cash payments and, in addition, getting another defendant, whose name is Phillip Kaye, who is not here on trial, to go out and tout the stock and tell people what a great stock it was and they should come in and buy this stock, and that is how they created the demand for the stock, nobody ever being informed, of course, of these secret cash payments.

Ladies and gentlemen, at this point in the proof you are going to have to follow things somewhat carefully, even perhaps with greater care, although I am sure you will be careful on everything, but it is going to get a little complicated because the evidence is going to show that whether the stock was coming from these Florida defendants

who wanted to make this distribution, Mr. Levine did not want to just buy the stock directly from them. He didn't think that would look right.

Consequently, he insisted, the evidence will show, that the stock come to him, that is Mr. Levine and his company, Lockwood, through other firms, and so you are going to see a number of tranactions where Mr. Feiffer brings the stock up from Florida, it already has Lockwood's name on it, but instead of just handing it over to Lockwood in a nice, simple transaction, he distributes it around to three other brokerage firms so that he can sell from those brokerage firms to Lockwood firms so that just from the documents it looks like Lockwood or Levine bought the stock from these other brokerage firms.

That is true, except, ladies and gentlemen, for one 4,000 share transaction, which it will appear Mr. Feiffer sold directly to Levine, but the evidence will show he didn't want to buy all the stock from Feiffer, didn't want it shown on his books, he just bought 75,000 shares of Stern-Haskell stock directly from Mr. Feiffer.

So it comes from these other firms into the firm of Lockwood.

The basic flow, however, ladies and gentlemen, as you will see, is that it comes from these defendants in

in Florida connected with the National Ventures Company and all ends up, even after it goes through these circuitous routes, in the hands of Lockwood and Company. There is a basic scheme, ladies and gentlemen, that you will hear testified about as to the way they did it.

The first thing the evidence will show is that they would get some customers to buy the stock, possibly through Mr. Wax recommending it to some of his customers, as the evidence will show he did. They would buy the stock from the Lockwood Company, run by Mr. Levine, who is Mr. Wax's very close associate, the evidence will show. Then after Mr. Levine got the order to buy the stock, the evidence will show he didn't keep any inventory of the stock -- after he got the order to buy it, he would call this apartment in New York where Feiffer, Stein and Rubinson, normally controlled all these activities from, and say he wanted to buy some stock or needed some stock and then Feiffer, Stein or Rubinson would call this other brokerage firm and say "Sell the stock" and then Mr. Levine would buy the stock from that other brokerage firm.

It will all be a sort of circuitous transaction but the Government submits you will have no difficulty following it once you have heard all of the evidence.

Of course, in connection with this, Mr. Feiffer,

after he sells the stock ostensibly to Mr. Levine, but really to a private investor who Mr. Levine is then going to sell it to, he picks up his phone, that is, Mr. Feiffer does, and the evidence will show just through this mechanism alone Mr. Feiffer picked up checks in excess of a hundred thousand dollars, that he took those back to the defendants Rubinson and Stein, that they divided them up and that then after dividing up that money, that they would give the payments to Levine and Wax that they deserved as a result of their promoting the stock, wholesaling the stock, and retailing the stock.

The evidence is going to show, ladies and gentlemen, that those are not the only sales that occur. In addition, Mr. Chester and Mr. Reynolds have to sell their stock too, because nobody wants to get stuck holding any of this stock. So they direct through their nominee accounts, I described earlier, certain sales of the stock to the investing public and some of those go through Mr. Levine's firm as well.

In additional, there will be proof that in June of 1969 Mr. Chester and Mr. Reynolds wanted to sell a block of this stock, approximately 15,000 shares--I think it was around 18,000 shares, actually -- but they could not sell this stock on the open market because if a big supply of

that stock hit Mr. Levine's market that he was very carefully controlling, that would mean Mr. Levine, on the one hand, is just buying the stock sold by Mr. Chester, and although that happens to some extent, the evidence will show that was not part of the agreement.

Basically, what happened was, Mr. Stein and Mr. Rubinson and Mr. Feiffer found someone else to buy that stock and you are going to hear that it was a charity organization known as B'Noth Jerusalem and Mr. Chester and Mr. Reynolds brought the stock up in June of 1969, went out one evening to this organization in Brooklyn and sold 18,000 shares of the stock for which they got paid in cash, $28,000, and then you are going to see that rather than it just being Mr. Reynolds selling that stock, as I mentioned earlier, Mr. Chester is going to share in the profits from the sale of that stock.

Then you are going to hear, ladies and gentlemen where does that stock go? Before it goes to the investing public from B'Noth Jerusalem, it comes back to Mr. Levine again because, as you recall, he is the wholesaler of this operation.

Finally, ladies and gentlemen, in addition to those sales of the stock, you are going to hear testimony about a fradulent printing of the stock, and that occurs

after a number of these transactions that I have just described to you, which Mr. Gardner gets 50,000 shares of stock, and you are going to hear that this was not even part of the original 200,000 shares, but instead was an entirely separate block of stock, part of a block of 350,000 shares that these defendants just printed up down in Florida without any attempt to go through any kind of underwriting and just brought it up to New York and gave Mr. Gardner a chunk of 50,000 shares.

You will hear that stock was issued on authority from Mr. Haskell and that Mr. Gardner took that to a bank, even though he had signed an investment letter from the stock pledging that stock would be restricted and gave it to the bank telling the bank it was free trading stock, he got $50,000 for doing that.

He ultimately defaulted on the loan and the bank was stuck with this restricted stock.

In addition, ladies and gentlemen, you are going to hear that there were certain parts of the scheme that didn't really work out too well, one part related to this 350,000 shares that I mentioned earlier and you are going to hear that only 50,000 shares, the shares given to Mr. Gardner were ever distributed to anybody, and the other 300,000 shares -- well, a small portion of the other 300,000

shares was used but the defendants never actually managed to sell the rest of that stock.

You should keep in mind that except for the conspiracy, the charges relating to the rigging of the market and the manipulative activities are independent of the charges related to the lack of registration. The Government charges these activities of using these cash payments and rigging the market would be illegal even if the stock was registered, but the Government charges in this case the additional crime of a failure to register the stock so that the public would have information.

Finally, ladies and gentlemen, as part of the Government's case that there was no exception whatever which allowed this stock to be sold to the public without compliance with the registration requirements, and I think there is going to be some discussion of a concept called a stock dividend or a spin-off, and I would like to tell you what the Government expects to prove on that score.

First of all, perhaps it is worth stating that obviously you have heard of dividends that sometimes corporations distribute to one another and frequently the dividends in the form of money given to the stockholders.

Well, as a normal part of corporate life of ten times, there are stock dividends where one company owns

another company and the management might come in and decide that the parent company doesn't want to own the subsidiary any more because they changed their business or found it unprofitable and the parent company decides to get rid of the subsidiary company, and one way is to sell the stock, or another way to do it is to distribute it to the stockholders by a dividend, and sometimes that is done because of an order that they have to divest themselves of that stock.

In this case, ladies and gentlemen, it is part of the Government's charge in the event that this concept of a stock dividend or spin-off occurs, that there was no real stock dividend, there was no real spin-off at all in this case but, rather, the Government expects to establish that all there was was a number of corporate transactions that were designed as a camouflage for what was really nothing more than an unlawful underwriting in violation of the registration requirements.

The Government expects to establish to your satisfaction that there was no business reason, no independent reason whatever, for any of these activities referred to or that may be referred to as a stock dividend, other than to sell unregistered stock to the investing public and that the defendants did a number of fraudulent things in

order to attempt to make it look as though this was a real stock distribution -- excuse me, a real stock dividend rather than an actual stock distribution of unregistered stock.

The Government expects to establish in this case that, first of all, this underwriting company I have referred to earlier, known as National Ventures, had no business whatever -- it wasn't a manufacturing company that had some other business and also distributed some stock, but it had no business whatever except for the distribution of this unregistered stock.

The Government expects to establish that there were balance sheets attempting to show that that company owned land, but that the company didn't really own the land at all.

The Government also expects to establish, going to the background of that company, that it had previously been a company called Toy King and that that company had been defunct for many years before this National Venture was rejuvenated as an underwriting company to sell unregistered stock.

In addition, ladies and gentlemen, the Government expects to establish that Stern-Haskell was really a subsidiary of National Ventures because, the Government will

show, there was an attempt to make it look like National Ventures bought stock of Stern-Haskell and some people may even say that occurred, but whether you look at the records you will see that for that entire 200,000 shares there was a purported price of $5,000, a very small amount for so many shares, but, in addition, at the same time or about the same time that National Ventures paid the money to Stern-Haskell for the stock, you are going to see another check going right back the other way in exactly the same amount to William K. Chester with that same $5,000.

So it just made it look like there was a purchase and sale but in fact it was nothing more than part of the distribution.

In addition, ladies and gentlemen, you will hear this happened not just once with National Ventures Company but on the three separate occasions doing exactly the same thing, underwriting these little private companies and selling them to the public without registration.

It is quite possible during the course of this trial you will hear some discussion about legal opinions. We don't know what that is going to be at this point, but I would like to caution you at this stage you should pay careful attention when you hear who gave the legal opinions and who received the legal opinions and whether they were

received under circumstances that would suggest that people really and truly believed the legal opinions and relied on people saying this is lawful or, rather, whether it was a situation where people were shopping around from one lawyer to another until they could find somebody that would say what they were doing was legal.

In addition, you should pay careful attention to what was told to any lawyers who expressed an opinion. Were they told the true facts about Stern-Haskell and National Ventures or were they told something significantly different that might cause them to say that it was legal even when the defendants who misrepresented the situation would know they were not getting a true legal opinion, but instead were defrauding in addition to the SEC the very lawyer that they might have been talking to?

The Government's proof, ladies and gentlemen, is going to come from a number of witnesses. Those witnesses are going to be insiders who actually participated in the scheme I have described to you. They are going to be some of the nominees whose names were used.

In addition, ladies and gentlemen, there are going to be some major figures we expect to testify.

Sidney Stein, who was a defendant in this case and has pleaded guilty, we expect will testify.

Phillip Kaye, who was a defendant in this case and has pleaded guilty, we expect will testify. Naturally, these are people who broke the law. The Government doesn't call them because we necessarily like them, we call them because they were the people who were there and can tell you what they said happened, and you are in a position to evaluate the testimony that they give.

In addition, ladies and gentlemen, we expect to call some outsiders who were not in on the scheme and they will tell you how things looked from their point of view.

In addition, ladies and gentlemen, we are going to present a number of documents to you. These documents are going to include stock certificates, stock transfer records, bank records. We will attempt to corroborate and also show you many things that cannot be shown through actual, live testimony.

For example, you are all familiar with bank records and some of you may not be so familiar with stock transfer records. A stock transfer record is kept by a transfer agent who keeps track of where the stock goes and how the names get transferred on the stock. You are going to have transfer records introduced into evidence here and it is going to be possible for you to trace exactly where the stock went as is represented on those transfer records.

In addition, ladies and gentlemen, it may turn out that some of the documents that you would like to see may not be available, some may be missing, but you may well decide that that is understandable if people are carrying on this type of enterprise, that they may not retain all the documents you would like to have later on when you are evaluating it.

As to the knowledge of the defendants, ladies and gentlemen, the Government is going to ask you to not expect that the defendants are going to go around announcing that what they were doing is illegal. In fact, you may find some proof that they were announcing that they said what they were doing was legal. It is up to you to infer from the circumstances that this was knowledge that this was illegal and the Government will ask you to do that from the fraudulent circumstances that surround the entire transaction.

Ladies and gentlemen, also we do not expect to establish -- excuse me, we expect to establish through the evidence that there may have been some defendants who didn't even know any of the other defendants, and that is understandable.

We expect the evidence to show this was a somewhat organized type of operation, just like a big company

is organized, and you will have some people in one branch office who generally don't know the people in another branch office.

I think perhaps it would be worthwhile for me to explain to you exactly which defendants it is the Government alleges and expects to prove did precisely what is in the conspiracy.

The defendant Feiffer is the last one you see there (indicating). The Government expects to establish the defendant Feiffer was part of the New York-Miami commuting team and that he sold a substantial amount of this stock and participated in dividing up the profits.

The defendant Reynolds is the next defendant. The Government expects to establish that the defendant Reynolds participated in the underwriting and that in addition he had this company that was formerly known as Toy King, that he gave that over to Mr. Chester so Mr. Chester could make National Ventures his underwriting firm, that he came up to New York and sold the stock for $28,000 in cash, spliting or dividing the money with Mr. Chester as I have described to you.

The next defendant is the defendant Michael Gardner, sitting right on the corner. The Government expects to establish he had his own securities firm,

Gardner Securities, was indeed a professional in the securities business and through that helped to move the price of the stock up, through entries in these pink sheets, and in addition, made the fraudulent loan at the bank in Canada.

The next defendant, ladies and gentlemen, skipping one individual, is the defendant William Chester, the lawyer that the Government expects to establish was part of the origination of this underwriting team and followed it all the way through and made major profits as a result of it.

Sitting next to him, ladies and gentlemen, is the defendant Norman Rubinson, with the gratuity. The Government expects to establish he was at the very top of this conspiracy and that he was primarily one of the originators of the whole thing, both in the underwriting level and also the manipulation of the price.

Next to him is the defendant Jerome Haskell which the Government expects to establish that the defendant Haskell was a half owner of the company Stern-Haskell. I should tell you the Government doesn't expect to establish that Mr. Haskell actually realized profits from this venture. Rather, the Government expects to establish that Mr. Haskell entered the venture hoping to profit himself but

that eventually he lost money, or may have lost money, but he certainly didn't make any money as a result of it. However, he assisted in this unlawful venture, the Government charges, in hopes of making profits for himself.

The next two defendants are the defendants Mr. Wax, in the dark blue suit, and Mr. Levine in the plaid suit. The Government expects to establish, first of all, Mr. Wax was a retailer of the stock who recommended to his customers the return for secret cash payments and that in addition Mr. Levine was a wholesaler of the stock who made this market in return for secret cash payments and, in addition, a secret stock payment.

I think it is well for you to recognize at this point that Mr. Levine and Mr. Wax are not charged with necessarily knowing that this stock was unregistered stock. The Government's charge is that they joined a conspiracy knowing that one of its objectives was to unlawfully manipulate the price of the stock and as far as the Government's theory goes, they may have known it was unregistered stock or may not have known, but substantially they didn't care, but were interested in the price of the stock.

It is probably well to point out that although I have said there were certain charges that differ as to certain defendants, it is not that the Government's con-

tention is that the stock was registered some of the time and unregistered the rest of the time, the Government's contention is the stock was always unregistered. It is not the Government's contention that the devices were fraudulent some of the time and not other times, the Government's contention is that these devices were always fraudulent and manipulative in the circumstances here.

What the Government has done in dividing up the charges, however, is that it has charged only those defendants as to which it expects to prove that they knew that the stock was unregistered, on the one hand, or those defendants who knew these fraudulent devices were being used to affect the price of the stock, and that is why you find some defendants named in some counts and not in other counts.

In addition, we expect to establish beyond a reasonable doubt that each of the defendants, all of them here on trial, did enter the conspiracy with knowledge of at least one of the unlawful objectives that the conspiracy had in mind.

Ladies and gentlemen, there are certainly going to be other people involved in the case, in the sense that you will hear their names mentioned a good deal, and maybe their conduct you may find was not entirely proper.

However, the important thing for you to do is to keep your eye on the ball, keep your eye on the defendants who are on trial before you and evaluate their guilt or their innocence as you may find.

You are going to find that there is a lot of proof of many details that I have not gone into. We would be here an awfully long time if before I sat down I gave you every detail of the proof that is going to come before you. You are going to have to sift out a good bit of it for yourselves and put it into place in the overall picture of what happened.

The Government will submit to you, however, that when you are ultimately going to look at the case you are going to find it is not that complicated but, rather, there has been an attempt to make it appear to be complicated through a lot of unnecessary corporate transactions that are really nothing more than a giant laundry and dry cleaning operation, attempting to make what is really an unlawful stock distribution either very difficult to figure out or appear to be a lawful distribution.

Consequently, ladies and gentlemen, when you are listening to the evidence, the Government asks you to keep an eye on the stock and if you do that, the stock of Stern-Haskell, although there be other companies mentioned -- you

are going to find by and large it flows in one direction, from these defendants on trial, along with the two defendants who have already pleaded guilty, out to the investing public.

In addition, the Government asks you to keep an eye on the money, ladies and gentlemen, and you are going to find through the course of this trial that the money flows in the other direction, in from the investing public into the pockets of these defendants.

That is true, as I say, except for the defendant Haskell, whom the Government does not contend made a profit on the transaction.

I will not be able to interrupt the evidence, nor will any of the other lawyers, and explain to you what we think is proved by a particular point or the significance of a particular point during the course of the trial, but, rather, that awaits the end, after all the evidence has been put in.

Consequently, I ask you to keep an open mind as you listen to the evidence and wait until the entire case is over with and at that time the Government or I will appear before you again and I will attempt to explain to you what it is the Government submits to your judgment has been proved in this case beyond a reasonable doubt as well

as anything can be proved in any courtroom.

Thank you.

THE COURT: Thank you, Mr. Wohl.

At this time the Court will permit any defendant who wishes to make an opening statement at this time to do so and the Court will also permit any defendant who wishes to do so to wait until the Government's case is completed before making an opening statement.

I will now go down the list of defendants and, as I have indicated, a defendant may make an opening statement at this time or reserve his opening until the end of the Government's case.

Mr. Rubinson, do you care to make an opening statement at this time?

MR. RUBINSON: No ma'am.

THE COURT: Mr. Feiffer, Mr. Robson?

MR. ROBSON: I would like to make an opening statement at this time, your Honor.

THE COURT: All right.

* * *

* * *

Q To the best of your recollection, as you sit here now, what did he say about Stern-Haskell?

A I don't remember exactly what he said, but just as he had done with many other stocks, he recommended that I buy it, and I did.

Q Did he tell you about the financial condition of the company, if you recall, Rabbi?

A I don't think so.

Q Did he tell you that the stock was not registered?

MR. ANDREWS: Objection to the leading nature of the questions and request that the question be put, "What did he tell you, if anything."

THE COURT: Yes.

Q Do you recall anything else he told you about the company?

A No, I don't. It has been quite some time.

Q Did he tell you that the stock was not registered?

A No.

MR. ANDREWS: Objection.

THE COURT: Overruled.

Q Did he tell you that the company had no independent audit report?

MR. ANDREWS: Your Honor, I object to these questions. The gentleman has stated his recollection.

MR. GROSS: I am now trying to see if we can refresh it, your Honor.

MR. ANDREWS: He is the government's witness and should have been prepared to testify prior to coming to court. He was asked to recount his recollection and he told us what his recollection was.

THE COURT: Overruled.

Q Rabbi, did he tell youthat he was getting a cash pay-off for selling this stock?

MR. ANDREWS: Objection, your Honor. The question is prejudicial. There has been no evidence that that is the fact. The question is calculated solely to prejudice the defendant.

MR. GROSS: Your Honor, the question is put to the witness to try and find out what Mr. Wax said and didn't say.

MR. ANDREWS: We have had testimony as to what he said. The rabbi told us what he recalls. This is a prejudicial question, it is loaded, it means to prejudice the jury against the defendant.

THE COURT: Overruled.

MR. GROSS: I ask that statement be stricken also, your Honor.

Q Did Mr. Wax tell you he was getting a cash payoff for selling this stock?

A No.

MR. FISCHETTI: Your Honor, I object on different grounds and ask that your Honor instruct the jury that it is the answers that come from the witness stand and not the questions that are evidence in this case.

THE COURT: Yes, the answers are the evidence in the case, not the questions.

Q Did he indicate to you in any way that he had a personal stake in the sale of this stock, Rabbi?

A No, he did not.

Q Did he tell you whom he was getting it from?

MR. ANDREWS: Your Honor, may I object to the

entire line of such questions? This is very objectionable to me.

THE COURT: Yes.

Q Did he tell you whom he was getting it from?

A No.

Q I place before you what has been marked as Government's Exhibit 71. Do you recognize that?

A Yes.

Q Do you recall what date you made your purchase of Stern-Haskell?

A Only by looking at the confirmation.

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Q Can you tell us that, Rabbi?

A It was 6/11/69, June 11, 1969.

Q What price did you pay, including the commission for Mr. Wax?

A $897.76.

Q What was the unit price--

A 200 shares. The unit price was 4-3/8s.

Q 200 shares?

A Yes.

Q Did you purchase that through Mr. Wax?

A I believe I did, yes.

Q You know what that document is, Government Exhibit 71, do you recognize it?

A It is a confirmation-- actually, it is a Xerox copy of a confirmation slip that I had gotten.

Q When did you get it, Rabbi?

A The settlement date was 6/18, and I presume it was between the 11th and the 18th.

Q How did you receive it?

A Through the mail.

Q Did you pay for the stock, Rabbi?

A Of course.

Q Did Walter Wax ever advise you to sell Stern-Haskell?

A Not to the best of my recollection.

MR. GROSS: Your Honor, I offer Government Exhibit 71 for identification into evidence as Government Exhibit 71 in evidence.

I have shown a copy to Mr. Andrews and I believe to all other counsel.

MR. ANDREWS: No objection, your Honor.

THE COURT: There being no objection, let it be received.

MR. GROSS: No further questions of the Rabbi at this time, your Honor.

(Government's Exhibit 71 received in evidence)

THE COURT: At this time we will take a recess. The jury is excused.

(Jury leaves courtroom)

THE COURT: The witness may come down.

You may be seated right over there.

You let us know when you hae had an opportunity to review the 3500 material.

MR. ANDREWS: Thank you, your Honor.

MR. FISCHETTI: While Mr. Andrews is reviewing the material, may I make a statement for the record?

With regard to the form of the questions, and your Honor has already ruled that Mr. Gross and Mr. Wohl

may ask each individual were they told about cash pay-offs, told to buy, told to sell, but my defendant is charged in the conspiracy count and that evidence is coming in against us at this stage.

The Government has not put in one scintilla of proof that any cash payments were made to any person and to allow them to ask those questions under the guise of attempting to refresh the recollection of the witness, when they know no such statements were made, is highly improper.

Your Honor instructed the jury thatit is the answers and not the questions that are evidence, but if Mr. Gross is going to be allowed to ask each individual customer: "Did he tell you about cash payments," I am afraid the predudical aspect of that particular question coming in without any other evidence of cash payments is severely prejudicial and improper.

MR. ANDREWS: Your Honor, since it involves my client, whether or not there was independent evidence of cash payments is irrelevant.

These witnesses are the Government's witnesses. They have had an opportunity to examine them and they know there were no such statements made by Mr. Wax.

They are asking it for one purpose and one

purpose only, and that is to prejudice the jury against the defendants.

If there were cash pay-offs, let them prove it through the testimony of a witness, but not through the question put by this man who bears the stamp of the United States Government on him and the jury takes him very seriously, I am sure.

MR. KEEGAN: Your Honor, I think we are all prejudiced by allegations of secret cash payments.

Mr. Gross knows how he will have to prove that, if he can, and the question assumes a fact not in evidence and prejudices all the defendants.

THE COURT: Anyone else care to be hard on that? If not, we will take a recess.

* * *

* * *

Q Do you recall anything else that he told you?

A No, sir.

Q Who brought up Stern-Haskell, you or Mr. Wax?

A Mr. Wax had called me on the phone.

Q You say you cannot recall anything else in the conversation at this point with regard to your conversation on Stern-Haskell with Mr. Wax?

A No, sir.

Q Do you recall whether he told you whether the stock was registered or not?

A No, I don't.

Q Do you recall whether he told you the company had

no independent audit report?

A No, sir.

MR. ANDREWS: I object to this series of questions, your Honor, on the same grounds as last time.

THE COURT: Overruled.

Q When Mr. Walter Wax recommended you buy stock in Stern-Haskell, do you recall whether or not he told you he was getting a cash pay-off for marketing the stock?

A No, he did not.

MR. ANDREWS: Objection.

THE COURT: Overruled.

Q Did he indicate to you, if you can recall, that he had a personal stake in the sale of this stock in any way?

A No, sir.

MR. ANDREWS: Objection to that question as well, not only as to its impropriety, but as to its form, your Honor, "personal stake."

THE COURT: Overruled.

* * *

testified as follows;

DIRECT EXAMINATION

BY MR. GROSS:

Q Mr. Sklar, what is your occupation, sir?

A Registered representative of Advest & Company.

Q Where is Advest Company?

A Hartford, Connecticut.

Q During 1969, what was your occupation, sir?

A Vice president, Equity Investment Corporation.

Q Were you a part owner in that company in 1969?

A Yes.

Q What kind of company was it?

A A broker dealership.

Q Directing your attention to June 6, 1969, did there come a time when you heard of a stock in a company called Stern-Haskell?

A Yes.

Q Who told you about Stern-Haskell?

A Mr. Lawrence Levine.

Q Do you see Mr. Levine in this courtroom?

A Yes.

MR. GROSS: May the record reflect that Mr. Levine stood up and that the witness identified him?

THE COURT: Yes.

* * *

Q Over-the-counter stocks rather than what we refer to as listed stocks?

A There are several listed stocks in there via the third market which is --

Q We-l, let's not get into that.

So, your testimony was that you learned about Stern-Haskell from Mr. Levine.

Do you recall what if anything he said to you?

A Yes. That Stern-Haskell was a spin-off of a company called National Ventures and that they were in the wholesale car business and that they purchased fleet cars -- their intention was to refurbish them and sell them in the markets.

Q Do you recall if he told you anything else about the company?

A The possible intention of the company to acquire the Cord car manufacturer.

THE COURT: What was that, please?

THE WITNESS: Cord -- C-o-r-d -- and that they were considering building a refurbishing plant in New Jersey.

Q Do you recall whether or not he told you he was getting a cash pay-off for selling the stock?

A Please repeat that?

Q Do you recall whether or not he told you he was getting a cash pay-off for selling the stock?

MR. ANDREWS: I respectfully object to the question for all the reasons set forth in the prior witness' testimony.

THE COURT: Overruled.

A No.

Q Did he recommend that you sell stock to your clients?

A He asked that it would be an interesting vehicle to retail.

Q And what if anything else did he say to you?

A Felt that the stock possibly might be an interesting investment on a speculative basis.

Q As a result of your conversation with Mr. Levine, did you have discussions with customers, your customers?

A On what date?

Q As a result of your first conversation with Mr. Levine.

A Yes.

Q And as a result of that, did some of your customers buy Stern-Haskell?

A Yes.

MR. ANDREWS: Objection. Objection to the

conclusion on -- by this witness of what motivated his customers to buy the stock.

THE COURT: Let me hear the question.

MR. GROSS: I will reframe it, your Honor.

Q You spoke to your customers about Stern-Haskell, am I correct?

A Yes.

Q Did they buy Stern-Haskell through you?

A Yes.

Q Did you buy it through Lockwood & Company where Mr. Levine was?

A Yes.

Q Now, I show you what has been marked Government's Exhibit 73A-G for identification.

Do you recognize these, Mr. Sklar?

A Yes.

Q Can you tell the jury how you recognize them?

A Those were equity investment --

MR. ANDREWS: I object to this characterising, describing or otherwise referring to these documents unless they are put into evidence; that is, the contents of the documents.

THE COURT: The question to the witness is whether he recognizes those.

Q What about during the course of a given day? Did you have occasion to call him --

A Yes, sir.

Q At least once a day?

A Yes, sir.

Q Often quite more than once a day, isn't that correct?

A Occasionally, yes, sir.

Q It was during one of those telephone discussions that you had the conversation which you related to us on your direct testimony. I believe I at least paraphrase it by saying with respect to Stern-Haskell Mr. Levine told you it might be an interesting vehicle to retail, that it might be an interesting spec?

A Yes, sir.

Q During one of these numerous telephone conversations?

A Yes, sir.

Q By "interesting spec," you mean an interesting speculative issue, is that correct?

A Yes, sir.

Q You were never given to understand that it would be anything more than a speculative issue , is that correct?

A Yes, sir.

Q During other such discussions that you had with Mr. Levine, during the period of your relationship you discussed other stocks, didn't you?

A Yes, sir.

Q In fact, on occasion you recommended stocks to Mr. Levine, didn't you?

A Rare occasions.

Q But there were occasions when you made such recommendations?

A Yes, sir.

Q And Mr. Levine made other references to other stocks to you, didn't he, during these discussions?

A Yes, sir.

Q Stern-Haskell clearly was not the only stock he ever brought to your attention, is that correct?

A No, sir.

Q In fact, there were many others, is that correct?

A Yes, sir.

Q Have you described in your direct testimony the full extent as best you can recall of what Mr. Levine told you about Stern-Haskell?

A Would you please repeat that, sir?

Q In your direct testimony, did you give us the full

conversation as best you recall it, in which Mr. Levine told you about Stern-Haskell?

A Yes, sir.

Q You didn't describe anything which would indicate that he brought pressure on you to buy the stock, that he pushed you to buy it, did he?

A No, sir.

Q Just told you a few things about the company, is that correct?

A Yes, sir.

Q When you came to sell the shares of Stern-Haskell for your customers, to whom did you sell it?

A When?

Q No. The shares of the Stern-Haskell that you bought for your customers. To whom did you sell those shares?

A I don't quite understand.

Q Well, there came a time when you sold the shares of Stern Haskell that you had bought.

A From Lockwood.

Q Yes.

A They were retailed to retail customers.

Q You had bought them from Lockwood for the account of your retail customers, is that correct?

A That is correct.

Q Did there come a time that you sold those securities for the account of your retail customers?

A There were some minor transactions from the time of original purchase, yes .

Q To whom did you sell the securities?

A To?

Q Yes.To whom.

A I believe there was some of the stock was traded back to Lockwood and I believe there was a trade made with another brokerage house.

Q Isn't it a fact that all of this stock you traded back to Lockwood they became owners of as you described in your direct testimony?

A Yes, sir.

Q And when they bought it, Lockwood, when they bought it back from you, they paid you roughly the same price that you had paid to buy it, isn't that correct?

A Yes, sir.

MR. ANDREWS: Thank you.

No other questions.

THE COURT: Any redirect?

MR. GROSS: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. GROSS:

Q Mr. Sklar, in your first conversation with Mr. Levine, did Mr. Levine ask you if you could move 5,000 shares of --

MR. ANDREWS: I object to the leading nature of the question and ask him to testify what was the discussion as best he can remember it.

I object to him putting these thoughts in the head of this witness when he didn't relate them on the direct testimony when asked what what the conversation. It is also improper redirect.

MR. GROSS: It is not.

Q Am I going to put anything in your mind, Mr. Sklar?

MR. ANDREWS: Your Honor, it wasn't in his mind when he was asked to relate the conversation on direct and I object to him putting it in there now.

MR. GROSS: May I rephrase the question, your Honor?

THE COURT: Yes.

Q Was there any conversation at all with Mr. Levine about moving the stock?

MR. ANDREWS: Objection, your Honor, to the form of the question. It is improper redirect, but the question should properly be, "What was the conversation"?

THE COURT: Overruled.

A Would you please repeat that?

Q Yes.

Did you have any conversation with Mr.Levine about moving Stern-Haskell stock 5000 shares?

A Yes.

Q Will you relate that conversation?

A Mr. Levine said could I move 5000 shares,and I said,"Possibly, but we were in no position to inventory any stock and therefore I would have to see, based upon what the retail outlook was then."

Q Stern-Haskell, if I am correct, and I will show you the records if you would like to refresh your recollection, went down from May 1969 through September 1969, am I correct?

A Yes.

* * *

* * *

RECROSS-EXAMINATION

BY MR. ANDREWS:

Q Mr. Sklar, isn't it necessary for a wholesaler to know the needs of a retailer in order to properly service his account, properly provide for his account?

A Yes.

Q Isn't that the spirit in which Mr. Levine asked you if you could move 5000 shares, as you recall the discussion?

MR. GROSS: I object to that, your Honor.

THE COURT: Yes. He cannot tell us what

Mr. Levine had in his mind or what his spirit was.

Q What did you understand the nature of the inquiry to be, for the purpose of knowing your needs?

MR. GROSS: I object to that, your Honor.

THE COURT: You can ask him what he understood Mr. Levine to mean when he said "Can you move 5000 shares?"

MR. ANDREWS: That is my question, your Honor.

A I understood that to mean that if 5000 shares cold be retailed, we would do it. If we couldn't do it, we couldn't do it.

Q Lockwood took back all of the stock you offered to sell them at the price that you had originally paid for it, isn't that correct?

A Yes, sir.

Q And you only offered 15 or 20%, but they took every one of those shares at the price you originally paid?

A Yes.

MR. ANDREWS: No further questions.

* * *

* * *

RECROSS-EXAMINATION

BY MR. ANDREWS:

Q If that representation was made to you, why didn't you offer to sell the whole 6000 shares back?

MR. GROSS: I object to that, your Honor.

MR. ANDREWS: I am sure he objects, but the question stands.

Q Why didn't you offer to sell the whole 6000 shares back, if you had a guarantee like that?

A Because it was retailed and we were in no position to inventory in the firm.

Q It is not unusual for a wholesaler to take a good regail customer out of a stock where the price has gone down? It is good business practice?

A Yes.

* * *

* * *

S T E N S T U R E N O R D I N, resumed:

THE CLERK: Be seated, Mr. Nordin.

You are still under oath.

MR. WOHL: I thought your Honor wanted to instruct the jury.

THE COURT: Yes. I'm sorry. Thank you for reminding me.

Ladies and gentlemen, during the course of the testimony of this witness, Mr. Nordin, he will be referring to stock of other companies, other than Stern-Haskell, the stock involved in this case. More specifically, he will be referring to stock of a company called Diston Industries and Mobile Homes.

He will also be giving testimony regarding the activities of certain of these defendants with respect

to Diston Industries and Mobile Homes and those defendants are the following:

Mr. Rubinson, Mr. Feiffer, Mr. Chester and Mr. Reynolds.

Now, I want to point out first that those four defendants are not on trial here for any activity by them with respect to Diston Industries and Mobile Homes but the Government is permitted to offer testimony regarding their activities with respect to these other companies for a very limited purpose, which I now want to explain to you.

Each of these defendants has entered a plea of not guilty with respect to the charges made against them here, as you well know, and one of the elements of the charge is that they intended to sell unregistered stock.

Now with respect to that, the Government would like to offer proof of their activities with respect to other companies so that you could consider that evidence when you consider the issue of intent on the part of these four defendants -- that is, when you are considering whether Mr. Rubinson, Mr. Feiffer, Mr. Chester or Mr. Reynolds intended to sell unregistered stock.

So, as I have said, this is testimony regarding the other corporations -- Diston Industries and Mobile

Homes is being offered for your consideration solely with respect to the issue of intent to sell unregistered stock on the part of these four defendants and this evidence must be considered by you only in considering the guilt or innocence of these four defendants and not the guilt or innocence of the other four defendants when you are considering the issue of intent, hwich is simply one element of the crime charged, as I will explain to you at the end of the case.

When I instruct you as to the law applicable to this case, I will tell you what elements the Government must have established to your satisfaction beyond a reasonable doubt before you can find the defendants guilty, and one of the elements will be the issue of intent to sell unregistered stock.

With that in mind we are going to permit the examination of Mr. Nordin to continue.

MR. ROBSON: May I request that your Honor add a little bit to the instruction you just gave to the jury in this respect:

You advised the jury that the defendants are charged with intending to sell unregistered stock and I think really the charge goes somewhat beyond that.

I don't think there is any dispute that

unregistered stock was sold. The charge merely is that they sold unregistered stock when the law required that it be registered.

The defense here is that they did sell unregistered stock under the belief that it was not required to be registered so I think that the issue really is not whether they intended to sell unregistered stock because everybody knew and we don't deny that it was unregistered stock; the question is whether that intent was to sell it in violation of the law.

THE COURT: Yes. The defendants claim that they sold the unregistered stock but they believed that it wasnot required to be registered.

So with that correction, or amplification, I want you to bear in mind what I have said with respect to considering the evidence, whatever it is, which comes in with respect to Diston Industries and Mobile Homes.

There will be testimony by Mr. Nordin, I assume, regarding these, and I think we received in evidence some stock certificates related to these two particular corporations.

* * *

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Q That's right.

A There was a discussion and I was present at that time, between Mr. Chester and Mr. Reynolds as to the availability of a corporation known as Toy King, that Mr. Reynolds could bring the Toy King Corporation to Mr. Chester and that it was possible to acquire the assets of Toy King and develop it into another corporation.

Q Was anything else said in that conversation?

A That there was an amount due, that there were bills due on the Toy King Corporation name to the transfer agent, and etc.

Q Anything else?

A That Mr. Reynolds had a means of brining this corporation down, that he had either a control or had an option of control, of Toy King.

Q Anything else?

A No, sir.

Q Was there any discussion of whether Toy King --

MR. ROBSON: I object. The witness said there was nothing else and I object to any leading.

MR. WOHL: I think the witness has forgotten something.

MR. ROBSON: I object to that, your Honor.

MR. ANDREWS: This has been going on during the

whole trial and this is so improper now --

MR. FISCHETTI: Let him be sworn now.

MR. ANDREWS: Let him testify.

MR. WOHL: I think the witness is capable of testifying and if I ask him if there was something of such and such a nature, he can say --

MR. ANDREWS: We can have a memorandum of law on the propriety of leading the witness as to these questions, before he is allowed to put thoughts into his head.

THE COURT: You are directing the question to the withess with regard to Toy King?

MR. WOHL: That's right, your Honor.

THE COURT: And the witness has told us, as best he can recall, what the conversation is. The next question to the witness should be, "Do you recall anything else which occurred during the course of that conversation or any further part of that conversation?"

MR. HIGGINS: Your Honor, I think the witness responded to that and said "Nothing else." That was his answer.

MR. WOHL: That's correct, your Honor.

THE COURT: And what do you say now?

MR. WOHL: Now I was going to ask him the question was there anything else in the conversation concerning

such and such a subject, not giving him the words said but just in the subject area to direct his attention tc it to see if it reminds him anything else was said.

THE COURT: You can do that.

MR. KEEGAN: Your Honor, may I state my objection? He can show him 3500 material so prejudicial material does not get before the jury. This witness might answer yes to anything and that is not good for the rest of us.

MR. WOHL: I don't intend to give him the words of the conversation, your Honor.

THE COURT: I have already ruled on it, Mr. Wohl.

Q Was there anything on the subject in the conversation of what if any business Toy King was engaged in at that time?

A I don't recollect, Mr. Wohl.

* * *

Q Did Mr. Chester say how many shares of stock Mr. Reynolds was going to receive?

A Yes, he did but I do not recognize the exact number of shares. He referred to the new issue transfer book of National Ventures.

Q Did Mr. Chester say anything to you concerning whether or not Mr. Rubinson was going to participate in the National Ventures transaction?

MR. CHESTER: Judge, again, I don't want to make unnecessary objections but all he is doing is testifying. He might as well take the stand. We don't need "Yes, yes, yes."

If he will again identify when, where, who else was there, but this is a continuous flow of information from his lips and he is just sitting there and saying "yes."

I am at least entitled to know, instead of this long story given out by him, saying "yes" to him, at least when and where and who was there. All this could not have happened in a half hour.

THE COURT: Well, that is the purpose of cross examination, Mr. Chester. No witness is going to be permitted to testify here against you without your having an opportunity to cross examine him, asking for dates and appearances and times and places. That is precisely the

purpose of cross examination in a criminal case.

Now, you have explained to me that you have not had experience as a criminal lawyer and I am telling you now, since you are representing yourself, that that is the purpose of cross examination.

So you let Mr. Wohl proceed to put on his case and then you cross examine any witness that you want against you.

If he fails to bring out something, that will be his problem, not yours, so let's proceed.

MR. CHESTER: May I just ask one question? I am not entitled to know what year at the present time or anything?

THE COURT: When you cross examine him, because I have told the witness to give us as best he can recall and I told him that at least three times now.

MR. CHESTER: But he gives us nothing.

THE COURT: He may not be able to recall.

MR. CHESTER: All right.

THE COURT: You can find that out on cross examination.

MR. ROBSON: Your Honor, may I add to Mr. Chester's objection, I understand that what Mr. Wohl, I think, is trying to do, which is to zero in on the witness' testimony but when he says something to the witness like, "Did you hear any

conversation about Mr. Rubinson's participation in the company," he is not only leading but he is giving this witness the complete answer that he wants and I think if he is merely attempting to refresh his recollection, the proper question is, "Were there any conversations about Mr. Rubinson?" because I think that I and the jury ought to be aware of Mr. Nordin's recollection as he sits here on the witness stand because his ability to remember this testimony after having reviewed it with Mr. Wohl, I think is critical with respect to his ability to testify today as to what happened five or six years ago and I don't think the questions should be that broad.

If he wants to zero in, that is enough. Let him ask did he ever hear any conversation in which Mr. Rubinson's name was mentioned and tell us that. I would like to know whether this witness remembers anything without Mr. Wohl first telling him.

THE COURT: Do you want to proceed, Mr. Wohl?

MR. WOHL: Yes.

* * *

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AFTERNOON SESSION

1:15 p.m.

THE COURT: Bring in the jurors.

(Jury present.)

THE COURT: Mr. Wohl, are you ready to proceed?

MR. WOHL: Yes, your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. WOHL:

Q Mr. Nordin, when was the last time that you saw the books which are Exhibits 15, 16, 17 and 18 on the premises of Stock Transfer Agencies?

A To the best of my recollection, August and September of 1969.

Q Now, did you see them anywhere else after they were in the premises of Stock Transfer Agencies?

A Yes, sir, I did.

Q Where were they then?

A At the home-office of William K. Chester.

Q Are the books, as they now stand and have been offered into evidence, entirely complete?

A I don't know. To the best of my knowledge, yes.

MR. WOHL: The government has offered --

MR. ROBSON: Could I have the last question and answer read back?

THE COURT: Yes.

(Record read.)

MR. CHESTER: I will object to that. First he is saying I don't know and then either he knows or he does not know. I mean I don't understand the answer when somebody says "I don't know" and then to the best of their knowledge.

THE COURT: Which is it?

THE WITNESS: Your Honor, it is to the best of my knowledge.

MR. CHESTER: They are complete?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. WOHL: The government has offered Exhibits 15, 16, 17 and 18 into evidence, your Honor.

THE COURT: Is there any objection?

MR. ROBSON: May I ask the witness one or two questions on the voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ROBSON:

Q Mr. Nordin, with respect to Exhibit 16, can you tell me again when it was that you first saw this book?

A Are you asking for a date, sir?

Q Yes, and as best you can recall it.

A November of 1968.

Q That was the first time you saw that book?

A Yes.

Q Were there notations in the book at the time you first saw it? Were there entries in the book when you first saw it?

A Sir, the names of the stockholders and shareholders were indicated on the pages, yes, sir.

Q And were there notations indicating numbers of shares also on those pages?

A Sir, I made some of those. There were some on some pages.

Q You have no idea who made those notations before you saw the books, do you?

A No, sir, I do not.

Q You do not know whether those notations are complete or incomplete, is that correct?

A That's correct.

Q After you started working at Stock Transfer Agencies and made certain entries, if I understand your testimony, not merely you, but several other people also made entires in those books?

A Yes, sir.

Q Those several other people being Miss Fletcher, a Miss somebody or other whose name is French.

A Gessau and Miss Bolet and also a number of the young ladies from the Kelly Girls, temporary employees.

Q Would it be accurate to say that most of the entries were made by other people?

A Yes, sir.

Q Do you have any idea of when they made entires, what information they were getting it from? Did you check their entries to see whether they were correct or complete?

A Yes, sir, I did. On the occasion, it varied, particularly when the initial issue from National Ventures, from the list that or names that we had acquired or obtained from Toy King were made in, the correct amount of shares was assigned to each name.

Q After the original issue?

A Right, sir.

Q Did you check to make sure that the records were correct at any point?

A Only on the occasion on a few names, certainly not on the whole list.

Q So then you really do not have any idea as you sit here, do you, whether the books are complete or not complete?

A Having reviewed --

Q Based upon your own personal knowledge I am talking about.

A Having gone through the books as I have during the past few months, these books, to the best of my knowledge are complete, sir.

Q When you say to the best of your knowledge, you did not make the entries and you did not see them being made and you did not check them, isn't that correct?

A I reviewed them because of the fact that of the nature of the entries made in the book and the inquiries from Mr. Chester as to the number of shares that were coming in in the mail, he wanted to know how many came in and to who they were to go, particularly in a large number of shares and the reference to the small shares, if there were 10, 20, or 50, he didn't care, didn't want to know about them.

Q You are saying that based upon your review of the book you determined that it is complete?

A Yes, sir.

Q In other words, based upon --

THE COURT: I don't understand what you mean by "complete." Complete in what respect?

MR. ROBSON: The witness has testified that they are complete, which I assume means that it shows all transfers and all issues of stock of Stern-Haskell.

Q Is that correct?

A Well, sir, anyone could take pages out or put pages in and I could not determine that, sir.

Q You have not got the vaguest idea?

A No, sir.

(Continued on next page.)

Q And you don't know whether every stockholder who bought stock is listed there and you don't know whether every transfer is listed there?

A No, sir.

Q As a matter of fact, would you look through that book, which is A to K, and tell me if the name Albert Feiffer occurs as a stockholder of Stern-Haskell.

THE COURT: Is this going to the admissibility of this document?

MR. ROBSON: Yes,your Honor.

May I tell you why?

The Government's position in this case has been -- and I don't think there is any real dispute - that stock was issued to Mr. Feiffer. Mr. Feiffer's name does not appear even in the book which makes it apparent that the book is incomplete.

THE COURT: That is not an objection to its admissibility.

MR. ROBSON: My objection, your Honor, is that it is not a complete record.

THE COURT: You are on the voir dire here, as to the admissibility of this document and no question which you have put thus far to the witness would preclude the admission of this document as a business record.

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MR. ROBSON: May I state my objection?

THE COURT: If you have an objection on the ground that it is not properly admissible as a business record because somebody else other than this witness made the entries, that objection is overruled.

Do you have some other objection?

MR. ROBSON: Yes.

My objection is not on the ground that it is not a business record.

My objection is on the ground that as a matter of law a business record is admissible only if it is complete and this record is not complete.

THE COURT: That is an incorrect statement of the law.

Overruled.

Do you have other grounds?

MR. ROBSON: No, your Honor.

THE COURT: Which exhibit are we talking about?

MR. ROBSON: I am talking about all of them; 15, 16, 17 and 18.

THE COURT: Overruled.

Is there any other objection on some other ground?

MR. HIGGINS: Your Honor, I have a couple of

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questions on a proposed voir dire dealing with business records, your Honor.

THE COURT: Not if it is going to be a repeat of what Mr. Robson asked.

MR. HIGGINS: It is not a repeat, your Honor.

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR.HIGGINS:

Q With respect to these exhibits, Mr. Nordin, the stock transfer records of National Ventures and Stern-Haskell, when was the last time you saw them prior to today?

A In August of 1969, sir, approximately; to the best of my recollection in August of 1969.

Q You last saw them in August of 1969?

A Yes, sir.

Q And from August of 1969 up to the present date, where have they been?

A To the best of my knowledge in the hands of Mr. William K. Chester.

Q From August of 1969 up to today these records were in the possession of Mr. Chester, is that your testimony?

A Yes, sir.

I saw them after they had been removed from the premises of Stock Transfer Agency at the location of Mr. Chester's home and office.

Q When was the last time you saw them in Mr. Chester's home?

A That would have been in November of 1969.

Q You saw them again?

A At his home but not at the agency.

Q From November of 1969 up to today, did you see them at any other time?

A Yes, sir.

Q Where?

A At the, Mr. Wohl's office.

Q When did you see them there?

A The first time?

Oh, to the best of my recollection, four months ago.

Q All right.

That would bring us back into the fall.

From November of 1969 up through four months ago do you know where these records were? Were they in your possession?

A No, sir, they were in Mr. Wohl's possession, to

the best of my knowledge.

Q You don't know where they were?

A No, sir.

Q So as I understand your testimony so far, you no longer had possession of the documents after August of 1969?

A That is correct, sir.

Q You don't know in whose possession they were with the exception of Mr.Chester; from November of 1969 you do not know where they were, is that correct?

A That is correct, sir. I don't know where they were.

MR.HIGGINS: Nothing further, your Honor.

THE COURT: All right.

If there is no further objection, the documents will be received, Government's Exhibits 15, 16, 17 and 18.

(Government's Exhibits 15, 16, 17 and 18 received in evidence)

* * *

* * *

Q Well, did you have a conversation with Mr. Chester on that subject?

A Yes. Mr. Chester gave me directions to issue certificates in the name of Lockwood from these certificates which were never given to the individuals--

MR. CHESTER: Again, could we have when, where and who was there?

For him to keep saying -- leading him into saying "Did you have a discussionwith Mr. Chester?" is not fair.

THE COURT: Mr. Chester, you can cross-examine the witness on it.

Proceed.

A On 4/10/69, April 10, 1969, Mr. Chester gave me instructions to make out the certificates in the name of Lockwood in the 100 share certificates, and this was accomplished, completed.

Q Did he say anything on the subject of why the certificates should be in 100 share certificates rather than larger denominations?

A Well, I originally had issued the certificates

in single share certificates for 18,775 shares for Mr. Hochen and the balance is indicated on my chart, but I was instructed they should have been made out-- I was in error and they should have been made out in 100 shares because they are easier to place on the market and they should have been in 100 share certificates each and this was done.

Q Now, I show you Government Exhibit 55, which is a group of certificates.

I ask you if you recognize the exhibits that are 55 --

A Yes, sir, I do.

Q What are they?

A They are certific tes of Stern-Haskell and they are made out to Lockwood in 100 share each certificates, starting with-- they are dated April 10, 1969, and starting with certificate No. 1520 and they have me listed as the transfer agent, with my signature stamp placed on it.

Q Are those certificates some of the certificates represented in the Lockwood block on your chart, which is Exhibit 27?

A Yes, sir, they are.

Q I now show you Exhibit 45 and I ask if you recognize that exhibit?

A Yes, sir, I do.

Q What is that?

A This is certificates made out for Stern-Haskell in hundred share lots and it is Certificate No. B-11349 and they are dated June 2, 1969 and they have my signature stamp inscribed as transfer agent.

Q In whose name are they made out?

A Lockwood and Company.

Q They are certificates on the ones in the block in your chart, is that correct?

MR. ANDREWS: Your Honor, I object to the leading nature of the question. Can't the witness simply be asked what do they represent. He is constantly leading this witness through his testimony and that is highly improper.

MR. WOHL: I withdraw the question, your Honor.

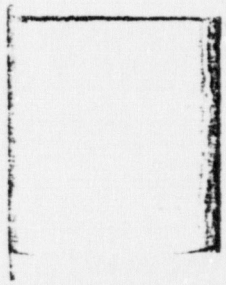
Q Mr. Nordin, are these some of the certificates that are reflected as going into the Lockwood name on

April 10, 1969 or are they other certificates?

MR. ANDREWS: Your Honor, again I object to the leading nature of the question. Can't he be asked what are they. If he is a competent witness to testify, let him tell us what they are.

THE COURT: Overruled.

* * *



VOIR DIRE EXAMINATION

BY MR. ANDREWS:

Q Mr. Nordin, when you issued the exhibits we are now talking about in the name of Lockwood and Company, did you have instructions from anyone at Lockwood and Company, to your knowledge, to do so?

A No, sir, not at Lockwood.

Q On whose instructions did you issue the certificates in the name of Lockwood and Company?

A Mr. Chester.

MR. ANDREWS: Thank you.

I object to their admission in evidence against my clients.

THE COURT: On what grounds.

MR. ANDREWS: On the ground there has been no connection except the unilateral action of this witness issuing them in the name of Lockwood.

They could have been issued to anybody else's name, yours, mine or anyone in the courtroom, and without the knowledge being attributed to my client. I object to it being admitted in evidence against him even subject to connection because of the prejudicial effect.

THE COURT: What do you say, Mr. Wohl?

MR. WOHL: The Government would submit, your

Honor, that certainly Mr. Levine does not have to be, either Mr. Levine or Mr. Wax, does not have to be shown to know ever detail of the activity that goes on in connection with the distribution of the stock.

THE COURT: Are you offering it subject to connection?

MR. WOHL: Yes.

THE COURT: All right, subject to connection as to Wax and Levine. That is 55, 45 and 46, is that right?

MR. WOHL: That's correct.

* * *

MR. ROBSON: I object. The only question is when something occurred and the witness gives us a little speech instead of when.

THE COURT: Do you recollect the date or month that you can tell us?

THE WITNESS: July of 1968, at the quarters of Stock Transfer Agency, at 6914 Biscayne Boulevard.

Mr. Chester had on several occasions mentioned to me the brokerage home of Lockwood & Company.

Q Did there come a time when he mentioned the name of Lockwood & Company in connection with Stern-Haskell stock?

A Yes, sir.

Q When did that occur?

A That occurred in 1969.

Q What months?

A March and April 1969.

Q What did Mr. Chester say concerning Lockwood & Company with reference to Stern-Haskell?

A In reference to Stern-Haskell Mr. Chester said to me that we would prepare the certificates for them, and that Mr. Rubinson had a direct contact with Lockwood & Company and was able to place the stock with them, and that Lockwood & Company was, so to speak, in his back pocket,

that he could handle the stock through Lockwood & Company, in New York.

Q After this stock was issued in the name of Lockwood & Company, did Mr. Chester give you any instructions concerning that stock?

MR. CHESTER: Judge, that is leading. I mean all he is doing is he is testifying and he is just saying yes or no.

THE COURT: Overruled.

A Yes, sir, I received specific instructions from Mr. Chester.

Q What did he say on that score?

A Mr. Chester instructed me to prepare a large amount of shares of stock inthe name of Lockwood & Company on Stern-Haskell certificates, and I proceeded to do so. And the fellow employees in the Stock Register Agency assisted me in preparation of those certificates.

Q Did you ever hear any telephone conversations in which it was stated that Lockwood & Company was on the other end of the line?

A Yes, sir. Mr. Chester --

MR. CHESTER: Objection again, your Honor. This is leading. When, where and who, and how can he tell who is on the other end of the line?

THE COURT: May I hear the question, Mr. Reporter?

(Question read)

THE COURT: Overruled.

Q When did you hear such convesation, Mr. Nordin?

A At the office of Mr. William K. Chester in the month of April and May of 1969.

Q What did you hear, and from whom did you hear it, on those occasions?

MR. ANDREWS: Objection, your Honor. Lockwood & Company has not been identified as far as I know. It is not a human being. It couldn't have been on the other end of the line.

I will object to any conversation with this entity, whatever it is, because it can't manifestly have a conversation.

THE COURT: The objection is overruled.

A It was at the facilities of Mr. Chester's home office, and Betty Fletcher took the phone call and announced to Mr. Chester Lockwood & Company was on the phone.

MR. FISCHETTI: I will object to anything Miss Fletcher said.

MR. WOHL: The Government would submit that would fall within an exception to the hearsay rule, if a

secretary comes in and says so-and-so is on the other end of the line, and then the witness hears Mr. Chester then get on the phone and start talking.

The Government would submit that that is certainly an exception to the hearsay rule, a res gestae exception for one.

MR. FISCHETTI: My objection is, your Honor, that Mr. Wohl is attempting to prove the person on the other end of the line through a person who was not present and therefore that statement to Mr. Nordin is inadmissible.

MR. WOHL: We have listed Miss Fletcher as a co-conspirator, in any event, although we don't necessarily rely on that particular exception to the hearsay rule.

It could also, I think, your Honor, go to the state of mind of Mr. Chester. If he thinks Lockwood & Company is on the other end of the line--

MR. ANDREWS: That is the inherent danger in this kind of testimony, your Honor; it is sheer speculation as to who was on the other end of the line.

If it is coming in, if Mr. Chester thought it was Lockwood, I have no objection; if that testimony is being offered to prove it was in fact Lockwood --

THE COURT: Objection overruled.

Proceed.

Q What did you hear said, then, in those phone conversations, Mr. Nordin?

A On that one particular occasion, Miss Fletcher said to Mr. Chester that Lockwood & Company was on the phone and that he was receiving instructions that he

gave to me to issue the number of certificates and to carry them to --

MR. ANDREWS: I object to this testimony, your Honor. He was asked what did he hear and now he is relating his impression of what he heard rather than the specific words.

THE COURT: I thought he was going beyond the conversation and telling us what Mr. Chester told him following that.

Do you want that?

MR. WOHL: Yes.

MR. ANDREWS: The answer is not responsive.

THE COURT: Mr. Wohl, put another question to the witness.

Q Did you hear what Mr. Chester daid in the conversation, into the telephone?

A Yes, I did.

Q What did he say into the telephone, if you can recall?

A "That Mr. Nordin would deliver these certificates to New York."

Q That is referring to you?

A Yes, sir.

Q Did you hear any other telephone conversations

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where Mr. Chester was apparently talking to someone at Lockwood?

MR. ANDREWS: Objection to Mr. Wohl testifying, your Honor.

Will the witness tell us what he heard, please?

THE COURT: Well, he is directing the witness' attention to a specific telephone call. There are a number of telephone calls and conversations, and he is directing the witness' attention to a specific call.

Is that it?

MR. WOHL: That is correct, your Honor.

MR. FISCHETTI: Your Honor, if I may add to it, the very purpose of the objection is the danger in this which is apparent in the quetion, where Mr. Wohl said where Mr. Chester was apparently talking to Lockwood & Company.

Judge, how does he know who he was talking to, unless this witness can say that?

THE COURT: This witness is telling us what he heard on the telephone. He was not in the offices of Lockwood and can't tell us that, he can only tell us what he heard, and he heard a conversation relating to Lockwood.

I gather that is what he is telling us.

Overruled.

MR. ANDREWS: Your Honor, may I be heard?

The very question we are confronting now is whether or not Mr. Chester was speaking allegedly to Lockwood.

That is the question to be decided based on what this witness heard, I assume.

Now, to start the whole conversation by Mr. Wohl asking in the apparent conversation, when he was apparently talking to Lockwood, let us draw from what he tells us, his ability to remember, what he heard, what in fact he heard, and what he can tell us now, whether or not it makes sense, but not with leading questions, assuming the conclusion that we are in fact going to have to make from his testimony, if it warrants it.

THE COURT: As I have indicated, the only difficulty is there are a number of conversations that apparently occurred on the telephone and Mr. Wohl is trying to direct the witness to these conversations separately.

Now, how he can do that, I don't know, other than to say, "Was there another conversation between Lockwood and Mr. Chester where it appeared that he was talking to somebody in Lockwood's office, and, if so, tell us about it."

MR. ANDREWS: I won't object to that kind of a question, your Honor, at all.

THE COURT: Let's proceed.

Q Mr. Nordin, other than the conversation that you just recited to us, were there any other conversations in which Mr. Chester was announced to be talking to someone at Lockwood & Company, that you heard?

A May I think for a minute?

THE COURT: Yes,you may think for a minute after any question.

(Pause)

A The only way I know how to respond to that questionis--

MR. ROBSON: I didn't hear that.

A The only way I know how to respond to that question is that on several occasions Mr. Chester or I said Lockwood & Company was on the phone and on one occasion I picked up the phone and I was told it was Lockwood,and I announced to Mr.Chester that Lockwood was on the phone and would like to speak with him.

This occurred on several occasions and I am trying to recall a particular occasion that would be of sincere interest to this--

MR. ROBSON: I can't hear him, your Honor.

A --that would be of sincere interest to this Court, and I don't recall.

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THE COURT: Read the answer, Mr. Reporter.

(Answer read)

THE COURT: Had you finished your answer?

A -- to this Court, pertinent to this Court, and I can't recall of anything that would impress me as being important at this time.

MR. ANDREWS: I can't even understand him any more, your Honor.

Maybe they can read back what he said just now.

THE COURT: Read the last part of that answer.

(Record read)

THE COURT: Let's not comment, Mr. --

MR. ANDREWS: No, your Honor.

THE COURT: Let's not comment--

MR. ANDREWS: No,your Honor --

THE COURT: Let's not comment on the witness' testimony.

MR. ANDREWS: I don't intend to do that. I would request a direction from the Court to the United States Attorney that he not be permitted to lead this witness through the testimony he thinks would be appropriate.

The witness said he can't recall anything more that is important.

THE COURT: I will have to rule on the question

as it is but. I can't rule on any questions in advance.

MR. ANDREWS: We have seen a pattern, your Honor, of leading the witness--

THE COURT: Mr. Andrews, I can't rule on any question in advance.

Proceed, Mr. Wohl.

Q Mr. Nordin, did there come a time when you received instructions concerning making up a batch of stock certificates?

A Yes, sir, I did.

Q When did that occur?

A The instructions were given to me six or seven of 1969.

Q From whom did you receive these instructions?.

A First from a phone call from Mr. Rubinson and then --

Q All right, now stop there.

Tell us what Mr. Rubinson said and what you said in that phone conversation.

MR. ROBSON: I don't think the witness should be interrupted in the middle of an answer because Mr. Wohl would like to. The witness was stopped in the middle of his answer.

MR. WOHL: I am just trying to break it down,

your Honor.

THE COURT: All right.

Q Proceed, Mr. Nordin.

A I receifed a phone call from Mr. Rubinson, and the call came in from out of town.

Mr. Rubinson said to me that certificates were to be made up in 100 share lots and made out to Lockwood & Company, and the number of shares to be issued.

Q Do you recall how many shares he said should be issued?

A Approximately 350,000.

Q What did you do then?

A I made sure that the rest of the office was able to stay over and to prepare the certificates, as they required an extensive amount of work,putting the addressograph plates on the certificates -- there were five steps that had to be followed in order to prepare the certificates for them.

Q Did you receive any instructions as to what you were to do with the certificates after you prepared them?

A Yes, sir.

Q From whom did you receive those instructions?

A From Mr. Chester.

Q In person or over the telephone?

A In person.

Q Where?

A At the offices of 6914 Biscayne Boulevard.

Q Tell us what Mr. Chester and you said on that subject?

A I confirmed with Mr. Chester that the certificates were indeed to be made up and they were in preparation of being made up and I was instructed then to deliver those certificates when they were completed to New York City into the hands of Mr. Rubinson at Lockwood & Company.

Q When did you have this conversation with Mr. Chester?

A On May 6, or May 7 of 1969.

Q Did you prepare these certificates?

A I did prepare them as instructed. I was told they were to be back dated to May 3, and this was done.

Q Who told you to back date the certificates?

A Both Mr. Rubinson and Mr. Chester.

Q Were you given any instructions as to whether or not any legend should appear on the certificates?

A Mr. Chester definitely instructed me not to place any legend on the certificates.

Q This is the stamp that you have testified about earlier, is that correct?

A That's correct, sir.

MR. HIGGINS: Your Honor, is Mr. Wohl referring to the stamp that the witness testified concerning National

Venture stock? That is my recollection. I don't recall any testimony concerning a stamp dealing with Stern-Haskell stock.

Q Was this stamp or legend used exclusively with any particular stock?

A No, sir. It was to appear on any stock certificate or any ledger sheet we were instructed to place it on. It is the same stamp that was originally made up for Mr. Rubinson's stock under Allan Electronics, Inc., and Calculator Computer Leasing Corporation, Inc.

Q Is this the stamp or legend you were told not to put on these particular Stern-Haskell shares?

A That's correct.

Q How many stamps or legends did you have at Stock Transfer Agency?

A Only one.

Q Could you just describe to the jury when you went about using that stamp how you would go about affixing it on a certificate?

A It is a regular rubber stamp that you just take and stamp on the certificate or on the ledger book and I read the contents of that stamp to the Court and jury in my previous testimony.

Q I show you Exhibit 43, Mr. Nordin, and ask you

if you recognize those certificates?

A Yes, sir, I do.

Q What are they?

A They are Stern-Haskell certificates and they are in the denomination of a thousand shares each and they are made out to Lockwood & Company and it is type-written in 1,000 shares and they are dated May 3, 1969 and they have my rubber stamp as transfer agent and they start with certificate A695 and they extend on through A934, and they are all the same denomination and all the same type certificate.

Q When you say they have your rubber stamp as transfer agent, is that the same rubber stamp as this legend or a different one?

A That is a different rubber stamp.

Q Will you hold them up for the jury so the jury can see the stamp you are referring to?

A Yes, sir.

Q What is the stamp, what does that stamp say on these shares?

A "Sten S. Nordin."

Q Does that exhibit number 43 include some of the certificates that were made up at the request of Mr. Rubinson and Mr. Chester, as you just described?

A Yes, sir.

Q Those are one thousand share certificates, is that right?

A Yes, sir.

Q What denomination were you told by Mr. Rubinson to make these certificates up in?

A 1,000 denomination, sir.

MR. CHESTER: Judge, I think in his prior testimony he testified that he was instructed as to 100 share certificates.

Is he changing his testimony?

MR. WOHL: I think he did say a hundred.

MR. CHESTER: Yes, he did, and you are correcting him.

Are you changing your testimony? Are you changing his testimony by leading him again?

THE COURT: Well, which is it, Mr. Nordin?

THE WITNESS: Your Honor, I made up many certificates and on this batch it is a thousand shares. On other shares I made up they were 100 shares. On these particular instructions from Mr. Rubinson and Mr. Chester, they were thousand share certificates.

MR. KEEGAN: That was a pretty speech, your Honor, but it doesn't answer the question.

The question is what was he instructed and by whom.

THE COURT: He has just told us now what his testimony is. I think previously the confusion may be that he didn't have those documents in his hand and he changed his testimony after Mr. Wohl handed him the batch of documents and he looked at them. He then changed his testimony and so that is probably what this is all about.

MR. CHESTER: He didn't change his testimony by looking at the stock certificates until Mr. Wohl started leading him again. He didn't even know the difference.

MR. KEEGAN: Could you put the question to him once more, what was the instructions from whomever as to the denomination of the certificates?

THE COURT: Read the last question and answer, Mr. Reporter.

(Record read.)

MR. KEEGAN: I am sorry, your Honor.

THE COURT: All right, Let's proceed.

Q Would you look at Exhibit 44, Mr. Nordin, 44 for identification?

A Yes, sir.

Q Do you recognize those certificates?

A Yes, sir, I do.

Q What are they?

A Stern-Haskell certificates also made out in denomination of 1,000 shares and made out to Lockwood & Company dated May 3, 1969 and they start with certificate number A644 and extend on through--they have them backwards, it should be A595 through A644.

Q Are these part of the same batch you made up on the instructions --

MR. ANDREWS: Objection to the leading nature of the question. "What are they" should be the proper form of the question.

MR. WOHL: I will withdraw the question.

THE COURT: To say to the witness what are they is not very informative or enlightening and I don't think the witness could answer a question like that. He would say they are stock certificates.

MR. ANDREWS: Where do they come from, what do they represent, and that is the proper way to question him and not to give him the answer and let him say yes or no.

MR. WOHL: I will rephrase the question, your Honor.

Q Do you recall when you first saw those certi-

ficates?

A Yes, sir, I do.

Q When was that?

A These are part of the ones I prepared in a batch, but they were all together. These certificates were together with the other certificates, as they are all in sequence in numbers.

Q When you say the other certificates, what exhibit number do you refer to?

A 43.

Q What did you do with the certificates in Exhibit 43 and 44 after you prepared them?

A I placed them in a manila envelope and at the instructions of Mr. Rubinson and Mr. Chester, I carried them to the City of New York.

Q Where did you go when you got to New York?

A To the offices of Lockwood & Company.

Q Do you recall where they were located?

A They are on Wall Street.

Q Do you recall the address?

A No, but they are indicated on the certificates as 55 Liberty Street, just off of Wall Street.

Q What did you do when you got to 55 Liberty Street?

A I looked on the plaque in the lobby for Lockwood & Company and I went upstairs and I was met with Mr. Rubinson at the reception desk.

Q Was anyone else present?

A Yes, sir.

Q Do you know who else was present?

A No, sir, I don't.

Q What happened after you met Mr. Rubinson?

A Mr. Rubinson and the other gentleman escorted me into the conference room, which was to the immediate left of the reception desk, and I was there for a very few minutes. I handed the batch of certificates in the manila envelope to Mr. Rubinson and Mr. Rubinson paid me $100 for delivering them to New York for him.

Q Then what happened?

A He gave me the balance of the funds to return to Miami. I immediately went back to the airport and went right back to Miami.

Q Did you ever hear any discussion of an organization called B'Noth Jerusalem?

A Yes, sir, I have.

Q From whom did you hear about that organization?

A Mr. Chester.

Q When did Mr. Chester tell you about B'Noth

Jerusalem?

A May or June of 1969.

Q Where did he tell you about it?

A At the offices of -- at the home office of William K. Chester or the Stock Transfer Agency at 6914 Biscayne Boulevard.

MR. CHESTER: Did you say or? You don't know where this conversation took place, at my house or your Stock Transfer Agency --

MR. WOHL: I object to Mr. Chester asking these questions.

MR. CHESTER: Well, you can't hear a conversation at both places at the same time. If he doesn't know, let him say that, or if he does, let him tell where.

THE COURT: Are you making a distinction between his home and office or are you saying home office?

THE WITNESS: Your Honor, I am saying home office or the Stock Transfer Agency. Every day we met at both places.

THE COURT: So you don't remember exactly where?

THE WITNESS: That's correct, your Honor.

THE COURT: All right.

Q Can you tell us what Mr. Chester said on the subject of B'Noth Jerusalem?

MR. ANDREWS: Objection to the admission of the conversation until we know the date.

MR. WOHL: He already said May or June 1969.

If the lawyers expect him to have an exact date --

MR. ANDREWS: No, that is sufficient. Thank you.

A That was a friendly company to Mr. Rubinson, and that Mr. Rubinson, it was one of his companies, and the stock to be issued in the name of B'Noth Jerusalem was of concern only to Mr. Rubinson.

MR. ROBSON: I move that that testimony be limited, and not taken against Mr. Feiffer. If that is only the concern of Mr. Rubinson I don't see how it involves any of the other defendants in this case.

THE COURT: Overruled.

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MR. WOHL: The Government offers Exhibit 56A.

THE COURT: Any objection to 56A?

MR. ANDREWS: I will object, your Honor.

I think this is one of the certificates on which the witness denied it was his signature that appears on the face of it.

MR. WOHL: I think that is correct, but I think he can certainly recognize the official stock certificate. He is the transfer agent.

MR. ANDREWS: May I have a voir dire?

THE COURT: Overruled.

(Government Exhibit 56A received in evidence)

MR. ANDREWS: Your Honor, just --

THE COURT: Is that the entire group of exhibits that you are offering at this time?

MR. WOHL: Yes, your Honor.

THE COURT: Because we are going to take a recess before we proceed.

All right, the jury is excused for ten minutes.

(In open court, jury not present)

THE COURT: Did you have something to say, Mr. Andrews?

MR. ANDREWS: I just wanted to inquire whether or not your Honor was concerned with the fact that this stock certificate may have been issued without authorization, it may be a forgery, and the witness has laid absolutely no foundation for it whatever other than it appears to be like the other certificates of Stern-Haskell.

It has no probative value. It is a forgery. And it certainly should not be in evidence here without some kind of a foundation to be connected to the issues, to the trial, to the issuing agency, to the issuing company.

All he did was look at a piece of paper and say that doesn't have my signature on it, and now it is in evidence and I am at a loss to understand how.

MR. KEEGAN: I will join in the objection. Obviously, it doesn't come in under the shopbook rule because it is not made in the regular course of Stock

Transfer Agency's business if the stock transfer agent does not sign.

If he can connect it up at a later time as relevant to the case, it should be offered at that time, not on the basis of the witness denying the signature.

THE COURT: Does anybody else want to object now that the exhibit is in?

All right. We will take a ten-minute recess.

(Recess)

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THE COURT: Mr. Rubinson, do you have any cross-examination of this witness?

MR. RUBINSON: I have just a few questions. I have not stood up before, your Honor, because I am not an attorney, and I have been hearing my name mentioned quite a bit by this gentleman here and if I cross-examine him not

in the proper way, I wish Mr. Wohl would give me a little latitude.

CROSS-EXAMINATION

BY MR. RUBINSON:

Q I have been hearing a few things about a Jerry Becker.

I just happened to glance at a piece of paper there and I see you mentioned Allan Electronics, Allan Electronic Industries, in general; is that correct?

You were the transfer agent for Allan Electronics, right?

A Yes, sir, I was.

Q Did we ever do any other business besides being a transfer agent for Allan Electronics?

A Yes, sir, there were several companies there.

Q Other companies?

A Yes.

Q But as a transfer agent only, right? Did we do any other business; yes or no, as a transfer agent only?

A Yes, sir, I ran the errand to New York for you.

Q I said any other business besides being a transfer agent?

A Yes, sir, that was not as a transfer agent.

I did it, as you said,as a favor to you and you would give me $100 if I ran up to New York to deliver certificates toyou which I did do, and I was not doing that as a transfer agent.

Q Do you remember selling Allan Electronics stock through the name of Jerry Becker?

A No, sir, I don't.

Q How about if I show you a sheet that you stole stock from Allan Electronics; you are a crook and that's all there is to it.

MR.RUBINSON: Give me that sheet, Mr. Chester. I want to show that he stold stocks and he must have a deal with Mr. Wohl on the grand larceny charge that he will not be prosecuted.

I want this jury to see who they are talking to.

THE COURT: Just a moment.

First of all, Mr. Rubinson, the credibility of any witness who testifies here is for the jury to determine which witness is telling the truth and which is not.

MR. RUBINSON: I want to show he is a crook, and I have the right here.

THE COURT: Just a moment--

MR. RUBINSON: That he stole $11,000 from my

company without anybody knowing it. It says right here, under the name of Jerry Becker--

THE COURT: Mr. Rubinson, the next thing I want to tell you, since you are not a lawyer --

MR.RUBINSON: That's right. I don't know how to defend myself, but when they put a crook on the stand and he must have a deal, what else could I say to this jury? I don't know how to tell this jury anything.

He didn't mention anything wrong about me,but this man shows me he stole from me and this is the first time I heard about this, when I heard the name Jerry Becker.

Would you like tosee the dates--

THE COURT: Mr. Rubinson, you cannot impeach the credibility of a witness except by showing that the witness has been previously convicted of a crime.

Now --

MR.RUBINSON: He was never caught yet, this man won't let him get caught.

THE COURT: The next thing is that if the witness has made some arrangement with the Government whereby he would not be prosecuted for certain crimes, you would be permitted to bring that out.

MR. RUBINSON: I don't know how to do that. All I know is when a crook sits on the stand, here it is. They have a man up here who talked out of two sides of his mouth, I heard him mention everybody, first he says about Mobile Ventures, that I am not involved, then he says -- this man says that I am involved, he says I am not, and I don't know how to object to these things, but this man is a crook. I just found out two minutes ago, because I didn't even know the name Jerry Beck.

Q Who got the $11,000?

THE COURT: Let me suggest to you how you can bring out from the witness whether or not he has received any promises of immunity from prosecution by the Government.

You can ask the witness whether he has received any promises from the Government that in exchange for his testimony here he would not be prosecuted in this or some other case.

Now, you put that question to the witness, if you want.

MR. RUBINSON: Okay.

Q Did you tell Mr. Wohl that you sold $11,000 worth of stock out of my company under a phony name? Yes or no?

A I never even heard of that $11,000. I don't know anything about it.

Q Would you like to see the dates and refresh your memory? It went through Prudential. Do you want me to call him as a witness and get you cited for perjury and grand larceny, unless you have a deal with this man?

A I know nothing about it.

Q You're a crook.

THE COURT: Mr. Rubinson, has the witness be prosecuted or convicted for this crime?

MR. RUBINSON: I don't know. I just found out that the man stole from me. I never knew about these things. He was my transfer agent and took the stock, like they just said, from somebody and sold it. I don't know about this man.

I used to pay him for doing my business and now he is sitting up there and can't read it -- he knows who Jerry Becker is, he said he knew. He knows who Prudential is.

Q You deny that and I will bring in Prudential and

prove you are a damn liar.

THE COURT: Mr. Rubinson, we can't permit any profanity in the courtroom.

MR. RUBINSON: I am sorry, your Honor. I don't know how to protect myself. I didn't hear nothing detrimental to me. This man has been saying Rubinson, Rubinson, Rubinson. Why didn't he say Stein, Stein, Stein? Where is Mr. Stein, the phantom. What happened to him, I want to know?

I don't know nothing anymore. If this man can't answer this question yes or no, if he knows who he gave the money to, what he did with the money, what happened to it, then I can't understand this whole trial. How they bring the man up here like that, how they dressed him up. A hippie, an idiot. They dressed him up to look like a man.

THE COURT: Mr. Rubinson, we don't permit lawyers or people representing themselves to go on making statements. If you want to testify --

MR. RUBINSON: I am representing myself here--

THE COURT: If you want to testify in this case, you can do so --

MR. RUBINSON: No, I am going to make a speech to the jury --

THE COURT: Just a moment. I have told the jury

you don't have to offer any defense, you don't have to call any witnesses, you don't have to produce any evidence, but if you want to testify, you are going to have to take the witness stand and be sworn and subject to cross examination by the United States Attorney.

Now, you can put questions to this witness, but you can't make any speeches.

MR. RUBINSON: Yes, ma'am.

THE COURT: You can ask this witness whether he has ever been convicted of a crime and, if so, then the jury can consider that in determining his believability --

MR. RUBINSON: How about if he should be convicted of a crime?

THE COURT: You can ask him, Mr. Rubinson, what promises he has received from the Government in exchange for his testimony, if any.

Now, if you want to do that, we will proceed and be in order, but I can't permit you to stand up here and make statements unless you are going to take the witness stand and be sworn and be cross examined.

MR. RUBINSON: Your Honor, that remains to be seen, whether I will take it or not, but this is the first time I got up to say anything.

I want to explain this to you, your Honor,

I didn't ask to be represented here by myself; I asked you for an attorney and you appointed two attorneys and took them away from me. Okay.

This man here mentioned before four names, Rubinson and three other names, that we should consider. He said before that Chester didn't want me in Mobile Ventures. I don't know how to object. You should have objected for me, he should have. (Indicating)

He put me into something this man said I shouldn't be into. All I know is, I am sitting there and Mr. Chester shows me a paper where this man robbed $11,000 from me. That is all I know. I don't know anything else. I don't know how to protect myself but when they bring a man like this to sit here and you allow him and not impeach his testimony, I don't know. This man should be impeached, thrown off the stand, out the window, in the street, where he belongs.

He's a bum. I don't know anything else.

Q Give me back the paper, I am going to sit down. Give it to me. I gave you the paper. Give it back to me.

THE COURT: Give him the paper.

MR. RUBINSON: I am going to sit down. I don't know anything else. The man is a crook. He doesn't want to answer the questions. It shows he's a crook.

THE COURT: I want to explain to the jury a statement made by Mr. Rubinson to the effect that I would not appoint a lawyer for him.

Mr. Rubinson made an application to the Court to appoint counsel to represent him and after a hearing the Court determined Mr. Rubinson was financially able to employ counsel of his own choosing and the Court could not, under the Criminal Justice Act, appoint counsel for him.

He is representing himself by choice.

MR. RUBINSON: You appointed two lawyers and took them away from me because they did not have time. That is in the record. I am sitting here, I have no business being here, and I am sitting here. But when a man stands up there that took something away from me and robbed me in the name of Jerry Becker -- this man has a hundred monikers that took out of my company 11 or more thousand, and he took the money and you allow him to sit up there, I don't know any more.

You don't give me a lawyer and now you don't let me talk to the man.

I have nothing else to say. I can't say no more. We will see what happens.

* * *

* * *

recollection, your Honor, as to how old he is, I think more pertinent and more meaningful to the jury was Mr. Nordon's response on at least two occasions when Mr. Chester asked about his age, when he said, "I don't understand what you are getting at." I think that is very significant to the jury.

This man is up there and when Mr. Wohl was asking questions he was outward, responsive, yes, no, being led right down the garden path, and when being asked questions on cross examination, which is an effort to get at the truth, the witness is somewhat guarded and unresponsive and when it comes time for your Honor to charge the jury as to how they should judge an individual's credibility, I am sure your Honor will point up, as your Honor should, whether or not a witness was evasive, unresponsive, elusive on cross examination.

To limit Mr. Chester in this area I think is unfair to the rest of the defendants, including my client.

THE COURT: Well, let me say this, Mr. Higgins:

You are not going to represent Mr. Chester in this proceeding.

MR. HIGGINS: But Mr. Chester's cross examination necessarily has a beneficial effect on my client and my client's defense, because this man's testimony, to the extent it is credible against Mr. Chester, comes in against my client. I am not representing Mr. Chester, I am representing my client, Mr. Gardner and to the extent Mr. Chester can impeach Mr. Nordin's testimony and show him not to be a truthful and honest witness, it is necessarily beneficial to my client.

THE COURT: As I have already said, the question has been asked and answered.

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* * *

THE COURT: Mr. Chester, what is this you want to get to the jury, before this jury, about this man's wife,

that you keep going back to?

MR. CHESTER: From his own deposition, he married a young girl, of a questionable behavioral pattern, and they kept evicting him because of her nocturnal habits.

THE COURT: What does that have to do with this case?

MR. DHESTER: This is what terminated the Stock Transfer Agency and this is why I had to take back all the records and redistribute them.

I think it is very important why after all those years he was doing well and he married this young girl and then he gave up transferring records and I had to take them over and I don't want to be held responsible, and I want the jury to know what happened to the Stock Transfer Agency.

He keeps saying it is mine.

THE COURT: Are you planning to take the witness stand and be cross-examined as to why you did thus and so?

MR. CHESTER: Thus and so what?

THE COURT: On this whole matter?

MR. CHESTER: This is cross-examination, your Honor.

THE COURT: Unless you are going to take the witness stand and be cross-examined, you are not going to

get in this testimony as to why you did certain things.

Is that clear? And in your mind, not his mind-- in your mind, you are not going to be permitted to inject your statement or testimony into this trial by putting questions like that to the witness,and you are not to ask this witness that question about his wife, because that was your-- that was something in your mind that he wouldn't know anything about.

MR. CHESTER: You are answering for the witness? This man will answer--

THE COURT: Let me tell you this, Mr. Chester, you are going to go so far that in addition, if you are convicted in this case, you may well be convicted for contempt of court, which I must advise you may carry a prison term.

Since you are not a criminal lawyer, let me tell you that, that you have a tendency to argue with the Court, you have consistently put things before this jury which I have asked you not to do, and you have a tendency to disobey the orders of the Court.

We don't carry on any cases like that, not here, and let lawyers get away with it, particularly -- you are representing yourself but you are also a lawyer and you know, as a minimum, you are supposed to obey Court

orders and when I tell you not to put something before the jury, I mean that, and you are going to be held in contempt of court.

So even if you are acquitted here you may still find yourself in jail.

Do you understand that?

MR. CHESTER: Well --

THE COURT: Do you understand you can go to jail?

MR. CHESTER: I understand I am being threatened.

THE COURT: You are being threatened by the Court with contempt.

MR. CHESTER: I understand that.

THE COURT: You can end up in jail for contempt of court. You may not know that since you are not a criminal lawyer, but you keep disobeying my orders and you are going to find yourself in jail.

MR. CHESTER: I don't mean to disobey the Court's orders, but let me state this: I understand if the Court rules--

THE COURT: He is not going to answer that question about his wife.

MR. CHESTER: May I make a proffer?

THE COURT: No, not about that, what you had in your mind.

MR. CHESTER: No, what he did.

THE COURT: Don't ask him anything about any of his wives.

MR. CHESTER: I can't even make a proffer?

THE COURT: That's right.

Do you understand that? Don't ask him about it.

MR. CHESTER: I don't think that is the law, but I understand it.

THE COURT: I don't care what you think. I am telling you, don't ask him about it.

MR. CHESTER: All right.

THE COURT: We will rcess until two o'clock for lunch.

(Luncheon recess: Time noted: 12:50 p.m.)

306a AFTERNOON SESSION

2:00 p.m.

(In open court, jury not present)

MR. CHESTER: Judge, before you bring in the jury, may I make a motion?

If the Court please, before we adjourned for lunch, I wanted togo into a series of questions with Mr. Nordin of what terminated the Stock Transfer.

I feel this is important. I do not wish to embarrass him, even though it might go to his immorals and also to his personal life.

If it is necessary for me to take the stand as to what happened on this occasion I think the jury must have the right to determine thereason why the Stock Transfer Agency was terminated.

I do not intend to embarrass Mr. Nordin over anything he already said in deposition, and beyond that I only have about 15 minutes more of questions, but this is very important to my case.

THE COURT: What is important to your case?

MR. CHESTER: Why is it?

THE COURT: What it is.

MR. CHESTER: Well, Mr. Nordin married a young 16-year old girl in May 1969, at which time he never would come

to the office again, and I started getting all the complaints, and so I had to go in and take back all the records and send them back to the companies so I wouldn't bear the brunt of it.

I want to show that once he got married to this young girl of questionable behavior, of habits which he has testified to, he terminated my and his relationship and I had to move out all the companies.

THE COURT: Where did he testify to any of that?

MR. CHESTER: On page 10, in 1970, after he said that he was married to a young girl, he says, he is talking about his present wife-- "We were continually evicted from these premises through the effort of my wife. She engaged in behavior not acceptable tothe owner."

THE COURT: What does that have to do with the company, and why it was terminated?

MR. CHESTER: He married a 16 year old girl and he became very jealous of her and her nocturnal activities and he wouldn't come to the office in the daytime.

THE COURT: Is that in the transcript?

MR. CHESTER: No.

THE COURT: Where is this coming from?

MR. CHESTER: I am going to ask him.

THE COURT: Ask him what?

MR. CHESTER: Whether after he got married to this 16-year old girl, did he stop coming to the office and Mr. Chester came and took all the records and sent them back to the company.

THE COURT: What would be the purpose of bring out that testimony?

MR. CHESTER: That will show what ultimately we had brought in, and it is always a question of issue as to who owns the Stock Transfer Agency.

At times he said he did, or I was going to give it to him,and at times I do, and this will complete the circle to the jury and show them what happened ultimately to the transfer agency.

THE COURT: What you want to get in is why you terminated the transfer agency, is that it?

MR. CHESTER: That is correct.

THE COURT: Because you thought he was having some problems with his wife?

MR. CHESTER: I don't know what his problems were, I won't even ask him that. I will askhim after he was married --

THE COURT: Why don't you just ask him if there came a time when he failed to come to the office regularly? He can answer that yes or no.

MR.KEEGAN: Your Honor, if I may, that might leave the impression he began to suspect something was wrong with the Stock Transfer Agency.

I think the reason he stopped coming is relevant.

THE COURT: I wish you would stop trying to represent Mr. Chester in this proceeding.

Mr. Chester is representing himself.

MR. KEEGAN: Your Honor, as I said before, this is a conspiracy. If Mr. Chester gets acquitted, my man gets acquitted. It is as simple as that. Anything I do to help Chester helps Reynolds.

THE COURT: You are not going to help Chester, that is at least the third time I have ruled that. You are not going to represent Mr. Chester, not in this case anyway.

MR. KEEGAN: I don't intend to, but it is impossible to separate in my mind that the things which will help Chester --

THE COURT: Mr. Chester is talking to me now and you are interrupting. You can sit down.

MR. CHESTER: Judge, I think I will have to go one step further than his just not coming by the office. I will have to show he married a 16-year old girl.

THE COURT: No, that is what I am telling you you

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can't bring out, because that amounts to an attempt to get to the jury, without taking the witness stand, what was in your mind in terminating the Stock Transfer Agency, and I am ruling again, Mr. Chester, that you are not going to be able to do that.

You can take the witness stand and you can testify under oath that that was your reason, and Mr. Wohl will have a chance to cross-examine you about that, but short of that, that is not going to get before the jury.

Now, let's proceed.

MR. CHESTER: Wait a minute, Judge.

May I ask him did he get married, and did he marry a 16-year old girl?

THE COURT: No, because whether he got married or not doesn't have anything to do with this case.

It is your idea that his marriage had something to dowith this case, so you can take the witness stand and tell us all about it.

MR. CHESTER: Can't I ask him, Judge?

THE COURT: No.

Now, you say you have about 15 more minutes?

MR. CHESTER: Yes, Ma'am.

THE COURT: Please stick to that, because I am going to have to put a limit on cross-examination, which I

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will now do before we proceed further in this case.

The Court's ruling is that no witness may be cross-examined by any counsel for more than two hours. That applies to all attorneys and all defendants representing themselves.

I don't want any argument on it.

MR. FISCHETTI: Just a question, your Honor.

THE COURT: I don't want any argument on it. The ruling is that no lawyer may cross-examine a witness for more than two hours, a particular witness, cross-examine for two hours.

MR. FISCHETTI: I understand that ruling.

Is your Honor ruling the same thing for direct examination?

THE COURT: No, I am not.

MR. FISCHETTI: Thank you,your Honor.

MR. HIGGINS: Does your Honor--

THE COURT: I am not going to hear argument on it.

MR. ANDREWS: I am not arguing, I want to object.

THE COURT: You don't have to object, and you know that, Mr. Andrews. You have an automatic exception to any ruling I make. You know that.

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Now sit down.

MR. HIGGINS: No argument. I am just inquiring, is your Honor's ruling applicable to the Government also?

THE COURT: You better pay attention, Mr.Higgins. Mr. Andrews just asked that question.

MR. FISCHETTI: I did, Judge.

THE COURT: Or Mr. Fischetti.

All right.

You can bring in the jury.

* * *

* * *

Q The person introduced to you as the owner of Lockwood when you came to New York, can you identify him? Do you see him in the courtroom today?

A No, sir, I cannot identify him.

Q You would know him if you saw him, is that correct?

A No, sir.

Q Didn't you testify in 1972 before Judge Palmieri that if you saw him you would know him?

A To the best of my ability I did not. They presented several -- they presented two individuals, if I recall and I know they presented one individual who took his glasses off and I was not able to identify him and I am not able to identify him today, sir.

Q But you would recognize the owner of Lockwood if you saw him, isn't that correct?

A No, sir.

Q I ask you again, did you tell Judge Palmieri in 197? that you would recognize the owner of Lockwood if you saw him then?

A I said I would try.

Q You didn't say you would recognize him, you said you would try to recognize him, is that correct?

A That is correct.

Q Bear with me for just a second.

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"Q Would you not even recognize him if you saw him?

"A I believe I would if I saw him I would."

Did you tell Judge Palmieri maybe you would?

A I said I believe I would, sir, and I say that

today.

Q Didn't you say maybe I would? You didn't say maybe I would, you said I believe I would if you saw him, I would. Isn't that what you told Judge Palmieri?

MR. WOHL: I object to this. This is getting outrageous.

MR. KEEGAN: I object to the comments.

MR. WOHL: "A It is two years ago. It's a hard thing. I hardly recognize Mr. Hochen with his wig and change of appearance.

"Q You only saw him for one time?

"A Yes, sir for 15 minutes, two years ago and then he goes on to say the question is you would not recognize, you would not even recognize if you saw him and then he says I believe I would, if I saw him I would."

MR. ANDREWS: There is nothing equivocal about that. Hochen had a wig on.

THE COURT: It is not inconsistent with his testimony. Move on, Mr. Andrews.

Q Back in 1972 which was three years ago, a year and a half to two years after the event, Mr. Levine stood up and you looked him right in the face and you could not recognize him then, could you?

A No, sir.

THE COURT: Are you going over this again? I said to move on to some other subject.

MR. ANDREWS: I hadn't mentioned that.

THE COURT: What are we talking about now?

MR. ANDREWS: The fact two years ago Mr. Levine stood up in the courtroom before Judge Palmieri and this man could not identify him as the owner of Lockwood.

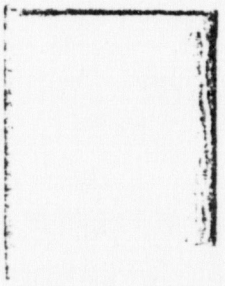
THE COURT: I said to move on to another subject. You have not presented anything inconsistent with his present testimony.

MR. KEEGAN: May I respectfully object to your Honor's commenting as to whether or not it is inconsistent.

MR. ANDREWS: I object to that.

THE COURT: I don't agree. Let's move on.

* * *



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Q You also testfieid on direct that Mr. Chester in connection with the issuance and delivery of those stocks gave you instructions to not legend the stock, isn't that right?

A That is correct, sir.

Q When you gave your statement to the SEC in 1969, in Miami, and again testified at the trial here in the Southern District of New York in 1972, did you ever testify that Mr. Chester had given you those specific instructions with respect to the legending or not legending of the Stern-Haskell stock?

A I don't recall, sir.

Q Isn't it a fact that you never testified to that?

A I don't know, sir. I would have to look at the record.

MR. WOHL: I object to anything further along this line unless Mr. Higgins shows that on one of these occasions the witness was asked a question that would seem to call for that information.

MR. HIGGINS: Your Honor, I think Mr. Wohl can properly on redirect reestablish the witness and attempt to explain as to why he did not testify concerning

these facts on two prior occasions but to limit cross-examination-- at least give us an opportunity to establish that the witness never said it before testifying in connection with this trial-- I think that limits our cross-examination and I think unnecessarily and possibly improperly injects your Honor into matters which are for the jury to decide, particularly on cross-examination and redirect, on how a witness responds to a question.

I think it is perhaps improper for Mr. Wohl to cause your Honor to inject herself into what should be an area for the jury to decide.

MR. WOHL: Your Honor, the problem with Mr. Higgins' approach, it would seem to me, is that if the witness was never asked a qusetion, of whether Mr. Chester told him to legend the stock or said anything about it, or would call for that answer, the only way to redirect, if Mr. Higgins gets the response of "Did you ever say this?" and he says "No," or he doesn't remember, would be to read to the jury the witness' entire testimony from all of these previous ocasions, because it is only then that the jury could make a determination as to whether that question was asked that should have caused him to say that and, consequently, I would submit that it would only be proper and the most sensible way of managing this is if Mr.Higgins

has a question he thinks the jury may conclude called for that information, he should put that question and that answer.

MR. CHESTER: Bill Chester.

I would like to make a motion following Mr. Wohl's suggestion, to put all these depositions in 1969, 1970, 1972 and 1974 into the record where Mr. Nordin testified so they can see how it has changed.

MR. WOHL: I object to the comment of how it has changed.

THE COURT: That would be improper, to put in evidence an out-of-court statement previously made by a witness who is here to testify.

The only use that can be made, Mr. Chester, of a prior statement made by a witness who is here to testify, is to try to impeach his credibility, that is, to show that he has testified to something here which is inconsistent with what he testified to on the earlier occasion, and that is the only use that can be made of a prior statement.

It cannot be received in evidence as such. It can only be used to impeach the credibility of the witness.

Of course, if he has no recollection at all as to a particular thing, that might be another occasion for

putting it in, but what is being done here with these prior statements is to try to impeach the credibility of the witness and it can't be admitted into evidence.

Now, the question before the witness is whether he ever previously testified to such a thing and the witness said "I don't know."

Now you are proceeding to show him where he has testified previously, is that it?

MR. HIGGINS: Yes, your Honor.

Again, to save time, and I am not arguing to your Honor's position that you have to establish an inconsistency, I would like to point out that an inconsistency can result just as easily from an omission of response or omission of stating a fact.

THE COURT: The point is, you can argue that, Mr. Higgins, but the witness is being asked whether he ever testified to certain things and you know he has not and I don't know that that is proper to ask him that unless you have some statement which you can show is inconsistent.

You can certainly argue that he never made any such statement before.

* * *

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Q Does the Stern-Haskell transfer record-- I believe it is Exhibit 24 -- show Lockwood as the owner of Stern-Haskell stock?

MR. ANDREWS: Your Honor, I object, because

we have established the book has nothing to do with ownership and Mr. Wohl continuously characterizes it as a reflection of ownership.

It is not that. The book shows it is in the proper name, the proper context.

THE COURT: Let me hear the question.

(Question read)

THE COURT: Objection overruled.

MR. ANDREWS: Is your Honor holding then that--

THE COURT: Objection overruled.

MR. ANDREWS: May I be heard in argument, your Honor?

THE COURT: No, you may not.

Proceed.

Q Will you answer the question, please?

A No, sir, it does not.

Q Would you look at page 118?

A On page 118, yes, sir, it does.

Q Page 118?

A Yes, sir.

Q What does the exhibit show on page 118?

A Louis Harvey Hochen, Certificate A252, Saul Weitzman, A546, certificate A476 of Harry Silber, and certificate No. A155 of Albert Feiffer for the total amount

of shares of 75,775 to be issued to Lockwood & Company, 55 Liberty Street, New York, New York, under certificates B110 through B10761, inclusive, and B10951 through B10955, inclusive, and certificate No. A580, giving a total of 75,775.

Q I show you Exhibit No. 26 and I ask you whether that exhibit in evidence includes any references to Lockwood & Company?

A Yes, sir, it does.

Q Could you hold those up so the jury can see them, please?

A Yes, sir.

Q How many pages of entries are there on Exhibit 26 referring to Lockwood & Company?

A Six.

Q There are many entries on each page, is that correct?

A Yes, sir.

Q Is each one of those entries a transfer?

A Yes, sir.

Q Could you explain to the jury how a share of stock is transferred after it is issued by you as the transfer agent? How does somebody go about transferring it?

MR. ANDREWS: Objection unless some expertise is shown in behalf of the witness concerning transfer of stock.

THE COURT: You are asking him what was done in the Stock Transfer company?

MR. WOHL: I am asking how somebody who receives

the stock would go about transferring it?

THE COURT: How he did it in Stock Transfer Agency?

MR. WOHL: It was something he had to look for.

THE COURT: Some incoming document?

MR. WOHL: Yes.

THE COURT: All right.

Overruled.

A As a document came in, I would look in the back of the certificate and if it was signed or it was with instructions to whom it was to be issued to, it would appear in the back of the certificate.

They would sign it saying that they have ordered or whatever they have done with it, that it is to be transferred to a new name or to a new something.

Q Would that be an endorsement?

A Yes, that is the word, endorsement.

Q Whose endorsement would have to be on the back of the stock?

A The name of whoever the stock appeared on the front face. If it was made out to Mr. Jones, Mr.Jones would sign on the back, or his agent or someone -- if it is a company name, somebody who is the president of the company or an officer of the company.

Q I show you Exhibit 55 which is a stack of stock certificates in the name of Lockwood & Company.

Could you look at those stock certificates and tell us whether they are endorsed?

A Yes, sir, they are.

Q Can you read whose endorsement that is?

A If I take the top certificate which is Certificate B10020 for 100 shares it is made out to Lockwood & Company, 55 Liberty Street, New York, New York.

It has a signature stamp on it, dated April 10, 1969.

If you turn it over, it is endorsed Lockwood & Company-- the signature is hard to read but it looks like Melmer. It has a rubber stamp, signature guaranteed by the American Bank & Trust Company, New York, New York, and then it has another name thatis not legible to me but it looks like JANCO.

It says authorized signature. Then it goes down to New York State stamp taxes paid through the National OTC Clearing Corporation, Russell & Pyle-- I am sorry, Russell and Sachs, member of National OTC Clearing Corporation.

Q Does the stamp Lockwood & Company appear there?

A No, sir, it is in handwriting.

Q What does it say in handwriting?

A Lockwood & Company and I can't read that signature.

Q Does it appear to be Ben Malmeth on the back there for Lockwood & Company?

A I don't know.

Q Does the same endorsement appear on all of the stock certificates included in Exhibit 55?

MR. KEEGAN: Must we really sit here while this witness goes through a couple of hundred stock certificates?

If they are there, he can show it to the witness at an appropriate time.

MR. WOHL: I think he can look through them.

THE WITNESS: They are all the same way. They all have the same stamps and the same handwriting that I just described.

Q Mr. Nordin, did Stock Transfer Agency engage in the business of being a transfer agent while you were working for it for other companies besides Stern-Haskell?

A Yes, sir.

Q How many companies?

A Approximately ten companies.

Q Can you name those companies?

A Allan Electronics, Inc., Calculator Computer Leasing Corporation, David Auld, General Auto Parts, National Ventures, Stern-Haskell, Diston Industries, Mobile Homes-- it seems to me there are two more.

Q Who was it who asked Stock Transfer Agency to be the transfer agent for all of those companies?

A Mr. Chester.

Q Did Stock Transfer Agency actually engage in the business of being transfer agent for any companies other than the ones that were brought to Stock Transfer Agency by Mr. Chester?

A Not to my knowledge, no, sir.

Q Did Mr. Chester ever tell you what particular qualities you had that qualified you to be a stock transfer agent for him?

MR. HIGGINS: Your Honor, I object to this.

Can we move on? I don't see the relevancy of the last three minutes of redirect.

We have had enough delays in this trial already.

THE COURT: Overruled.

A No, sir. He just carried me down there or instructed me to go down to Allan Appliances and there we started the Stock Transfer Agency.

Q Were there any other organizations engaged in

the business of being a stock transfer agent in Miami at the time?

A Yes, sir.

Q Who engaged in such a business?

MR. KEEGAN: This is irrelevant that there were other companies engaged in that business.

It has nothing to do with the trial.

THE COURT: Overruled.

A Any banks are also known as transfer agents.

Q How did you learn that you were the president of Calculator Computer Leasing Corporation?

A Mr. Chester brought two pieces of paper to me and it had a typewritten notice on it that I was to be the president of Calculator Computer Corporation and it was dated and with it he handed me another piece of paper which was not dated and resigning me as president of Calculator Computer Corporation, and Mr. Chester said, "Stan, I would like you to sign these," and I signed it.

MR. CHESTER: Is Mr. Wohl getting again into leading? He is not saying when, where and who was there, nor did he say anything that happened within the last 20 years.

If I am going to cross-examine, I have to know when, where and who was there in all these transactions

since he is going to get into more conversations.

THE COURT: Overruled.

Q Do you recall when that occurred?

A The date, sir?

Q As best you can recall.

A If I can see-- the spring of 1968, anyway.

Q Did you ever attend any stockholders meetings of Calculator Computer?

A No, sir, I did not.

Q Do you know how many public stockholders Calculator Computer had?

MR. CHESTER: I make another objection, your Honor. I don't think it is relevant, I guess is the word.

We are talking about Calculator Computer. We are here on Stern-Haskell. That other group had nothing to do with the charges in the indictment.

Those companies are still trading.

MR. WOHL: I object to any speeches about whether they are trading and what circumstances.

THE COURT: Yes, we have had the same objection on direct examination that we are going over now.

We have had all this before.

Overruled.

Q Did you ever hire any employees of Calculator

Computer?

A No, sir.

Q Did you ever fire any employees of Calculator Computer?

A No, sir.

Q Did you have any experience in the calculator business?

A No, sir.

Q Did you have any experience in the computer business?

A No, sir.

Q Do you know what kind of business Calculator Computer was engaged in?

A No, sir, I do not.

Q Did Mr. Chester ever tell you what particular qualities you had that were causing him to make you the president of this public corporation?

MR. CHESTER: Objection. This is leading.

He is going to say,"Yes, Mr. Chester did."

Why not ask him what qualifications. Every time he says "Did Mr. Chester say this?" He says, "Yes, he did."

It is leading.

Let the man tell what he knows. That is my

332a skipped

objection.

THE COURT: Overruled.

Do you have the question in mind?

(Question read)

A No, sir.

Q How did you learn that you were the secretary of National Ventures?

A Mr. Chester handed me two pieces of paper that I knew came from the corporate book of National Ventures and they were typewritten and he said, "Stan, I would like you to sign this," and I knew then I was signing as secretary and resigning as secretary at the same time.

Q When did that occur?

A May I look at the National Ventures --

Q Exhibit 15.

A Yes.

Q Yes, go ahead.

A I would like to look at the declaration of notice rather to stockholders of National Ventures. There is notice to Toy King shareholders that National Ventures was going to be formed.

It was approximately a month prior to that date, whatever appears in that letter. It was a notice.

Q Handing the wtiness Exhibit 13A, B and C, are

those the exhibits you are referring to?

A October 1968.

Q Did you ever attend any directors' meetings of National Ventures?

A No, sir.

Q Did you ever attend any stockholders meetings of National Ventures?

A No, sir, I did not.

Q Did you ever hire or fire any employees of National Ventures?

A No, sir, I did not.

Q Do you recall the telephone conversation which youheard Mr. Chester have with someone you understood to be an attorney in Washington that you testified about earlier?

A I recall the conversation, yes, sir.

MR. CHESTER: I object. That is misleading. He said he heard me have a conversation with an attorney, with the SEC. You are about to forget the SEC. Let's not forget the SEC.

MR. WOHL: There was confusion but in any event, do you recall that conversation?

A Yes, sir.

Q Did you hear the person on the other end of the

telephone--

MR. CHESTER: I object again, Judge.

Again this is all brought out on direct. He asked him nothing again. All he is doing is going right back to the same conversations.

I don't understand why on the redirect he goes right back through his primary testimony.

THE COURT: He is permitted; since you are not a criminal lawyer, I will explain to you that the U. S. Attorney is permitted on redirect to go into any subject which was gone into by the lawyers on their cross-examination and thatis what he is doing now.

Proceed.

Q Mr. Nordin, when you were sitting there listening to Mr. Chester talk into the telephone, did you hear Mr. Chester say into the telephone that many of the stockholders --

MR. CHESTER: I object. Let him ask the question and let him answer what he heard. Don't say did you hear Mr. Chester say this and let him say yes or no. Let him ask him what did Mr. Chester say. This is leading.

THE COURT: On redirect he is permitted to ask leading questions.

Q Did you in this telephone conversation, Mr. Nordin, hear Mr. Chester say that many of the stockholders of National Ventures were in fact people who had received gift stock and had never bought the stock and were unaware of the fact they were stockholders in National Ventures?

A No, sir, I did not.

MR. KEEGAN: I request the Court instruct the jury that of course that is only a question and the answer is no and no is the evidence.

THE COURT: I am not following that, I am sorry.

MR. KEEGAN: Mr. Wohl makes a two-minute question, did Mr. Chester tell the attorney on the other end of the line in Washington, D. C. that many of the stockholders in National Ventures had received gift stock

and had not paid for it, something to that effect, that gets before the jury and the answer is no.

I would request the Court to instruct them that the question is not considered evidence, only the answer.

MR. WOHL: The witness testified--

THE COURT: That Mr. Chester did not so tell the SEC?

MR. CHESTER: Mr. Nordin --

MR. WOHL: I object to this. Mr. Chester will have his opportunity to question. I don't see how he should be interferring with the redirect examination at this point.

MR. CHESTER: I want to make my objection for the record. Mr. Nordin testified that he came to New York in 1947 and spent practically a month here, four or five -- he knows what the conversations are and I object to him saying conversations and letting him say no.

He knows what the conversation was.

THE COURT: No.

MR. CHESTER: He does not know?

THE COURT: He cannot conduct an examination like that. He has to put a question to the witness on redirect. He can ask leading questions, overruled.

MR. CHESTER: May I ask leading questions when

it comes my turn then?

THE COURT: On cross examination you can always ask leading questions. That is the purpose of it.

MR. CHESTER: Thank you.

Q In this telephone conversation, did you hear Mr. Chester say into the telephone that National Ventures had no business at all other than spinning off these companies' stock?

A No, sir, I did not.

MR. CHESTER: What is the answer?

THE WITNESS: No, sir, I did not.

MR. ROBSON: This is an attempt by Mr. Wohl to sum up or testify. We are not here to find out what Mr. Wohl's opinion is of what Mr. Chester should or should not say. The witness is supposed to testify about a conversation he overheard or eavesdropped on. That is all he should be entitled to testify to, what he heard. When he finished his recollection of what he heard that is the end of it. This is not an attempt at cross examination. This is an attempt to by Mr. Wohl, to testify.

THE COURT: Overruled.

Q In this telephone conversation did you hear Mr. Chester tell the person on the other end of the telephone that the land that was listed as an asset of National

Ventures was land to which Mr. Chester and National Ventures had no clear title?

A No, sir, I did not.

Q Did you hear Mr. Chester tell the person on the other end of the phone that Mr. Chester had not paid for the land?

MR. CHESTER: I didn't hear the question.

Q That Mr. Chester had not paid for the land.

A No, sir, I did not.

Q Did you hear Mr. Chester tell the person on the other end of the phone that within ten days of the payment by National Ventures to Stern-Haskell for this supposed spin-off stock that Stern-Haskell had paid Mr. Chester a little fee in the exact same amount as this apparent purchase price?

A No, sir, I did not.

Q Did you hear him --

MR. CHESTER: I didn't hear you.

THE WITNESS: No, sir, I did not.

MR. ANDREWS: Your Honor, I have to object. I know that the questioning is about Mr. Chester but I don't think Mr. Wohl has a good faith basis to ask this question. He has no reason to suspect the witness is going to testify yes. He is testifying and getting the witness to

rubber stamp it. This is improper, more than improper. It has to do with the attorney's obligation to the Court and the jury.

MR. CHESTER: He is not rubber stamping, he is not getting the answer he wants. This man keeps saying no to six questions and getting it before the jury --

MR. ANDREWS: Rubber stamping is a wrong word. He is a sounding board for which Mr. Wohl can testify to questions the answers of which he knows.

THE COURT: Overruled.

Q In this conversation did you hear Mr. Chester say into the telephone that within ten days of the payment by National Ventures to Mobile Home Venutres in payment for the Mobile Home Venture stock that Mobile Home Ventures had paid Mr. Chester an attorney's fee in the exact same amount as this apparent purchase price?

MR. CHESTER: Judge, I want to object because Mobile Home Ventures had never even been heard of way back in 1968.

Nobody ever heard of them. I didn't make the name up myself until June 1969. What he is doing here is getting no, no, no, questions on things that didn't even appear in 1968.

THE COURT: Mr. Chester, you will have a chance

to recross on this testimony.

MR. CHESTER: But he knows that Mobile Homes didn't even start until mid-'69. Nobody ever heard of it and he is asking this man in October, November of '68 about Mobile Homes.

MR. WOHL: I don't think the witness testified that the conversation was that early. I think the conversation was later, around 1969.

MR. CHESTER: When was the conversation?

THE COURT: When was the conversation we are talking about, do you recall?

THE WITNESS: Can I think now for a minute?

THE COURT: Yes.

MR. ANDREWS: Has he been denying the content of the conversation without knowing what he is talking about?

THE COURT: He is trying to give us the date.

MR. HIGGINS: The witness on three prior occasions has said the fall of '68.

MR. CHESTER: It's one telephone call, an attorney with the SEC in New York, only one which was in early '68.

MR. WOHL: Is Mr. Chester attempting to testify?

MR. CHESTER: Is Mr. Wohl attempting?

MR. ANDREWS: I suggest you bring this charade

to a halt. This is an attempt to let Mr. Wohl testify. Let him take the witness stand. It violates the canons of ethics.

MR. KEEGAN: I respectfully join in the motion, your Honor. The witness is not giving evidence. He is simply saying I did not hear Mr. Chester in a conversation which date I do not recall say thus and so.

That is not evidence of anything. Perhaps he did not hear it.

On the other hand, perhaps it was not said. But Mr. Wohl has given the jury the impression that Chester should have said these things and we don't know that. I don't think Mr. Wohl has a good faith.basis for putting these questions. He knows they are going to be answered no.

MR. CHESTER: My point is that this Mobile Home corporation was not even thought up until nine months later and to let him ask before I even thought it up whether I asked an attorney in Washington what about Mobile Homes is completely wrong and unfair.

If there is a canons of ethics he has violated every one of them.

THE COURT: You can ask the witness about it, Mr. Chester, on recross examination.

Proceed, Mr. Wohl.

MR. KEEGAN: If I may, there is nothing to ask about because he heard nothing. What do we ask him on redirect?

Meanwhile Mr. Wohl is giving the jury the impression that Chester should have said some of these things.

THE COURT: Proceed, Mr. Wohl.

* * *

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MR. WOHL: The Government offers page 933 of Mr. Nordin's testimony in February of 1972, lines 3 through 12, into evidence.

MR. KEEGAN: Your Honor, I object, of course. I don't know what he thinks he is doing now.

MR. WOHL: I think this was testimony that was referred to by Mr. Keegan and that was partially read before the jury but was not put in evidence and I am just offering it into evidence.

MR. KEEGAN: It was not put into evidence because Mr. Wohl objected to it and the Court ruled it was not inconsistent with anything said at the trial. We get to both ways, I can't get it in but he offers it.

MR. HIGGINS: I would be willing to offer the entire testimony at the 1972 trial.

MR. CHESTER: I make a motion to put all the depositions from 1969 through 1975 in, so the jury can see the inconsistency.

MR. KEEGAN: I join in that motion.

MR. ANDREWS: I join in that motion too.

THE COURT: Mr. Wohl, I don't specifically recollect this passage. Would you let me see that, please?

MR. WOHL: Yes, your Honor. (Handing).

THE COURT: Just this page 933?

MR. WOHL: Yes, just line 3 through 12, your Honor.

(Pause.)

THE COURT: I don't understand on what theory you are now offering it, Mr. Wohl.

MR. WOHL: My recollection was that Mr. Keegan referred to it without reading the entire section to the jury under an apparent claim that it is inconsistent with his trial testimony.

The Government just is of the view that the entire passge should be read to the jury so they can evaluate whether they think it is consistent or inconsistent, rather than having snatches of it referred to in questions.

THE COURT: I see. All right.

MR. ANDREWS: Does that mean the entire transcript?

THE COURT: No, just that page.

MR. ANDREWS: That is a snatch, if I ever heard one. Can we have the whole transcript in evidence?

THE COURT: No, we cannot.

MR. WOHL: So many comments have been made about ethics and I would like the Court to direct counsel to stop making this disingenious offer of entire transcripts. They know they don't want the entire transcript --

MR. KEEGAN: We agreed to it and let's see.

MR. ANDREWS: Mr. Wohl says he doesn't want snatches in and he puts four lines in? I will go for the whole transcript.

MR. CHESTER: I will agree to that.

MR. ANDREWS: If anyone was disingenious, your Honor, it was Mr. Wohl.

MR. WOHL: They know we are not going to sit and read pages and pages --

THE COURT: Mr. Wohl, the clerk will mark page 93 of the transcript of what date? February 1972.

All right, page 933 received as Government's Exhibit 103 in evidence.

xx (Government's Exhibit 103 received in evidence.)

MR. WOHL: May I read it to the jury, your Honor?

THE COURT: Yes.

MR. KEEGAN: Your Honor, we have offered the entire transcript and --

THE COURT: That motion is denied.

MR. KEEGAN: We are asking Mr. Wohl if he consents, do you want to offer the entire transcript?

MR. WOHL: I would consent to it but it is obvious --

MR. KEEGAN: Good, let's put it in.

MR. WOHL: The Government doesn't oppose putting in the entire transcript but it is obvious, and they know it, that as a matter of trial management nobody is going to sit and read a four or five volume to a jury when the rules of evidence allow them to cull through it and put in every speck that they regard as inconsistent with what the witness has testified to here and they have not found anything insignificant and that is the way it should be done and I don't think it is fair to be jumping up and making this offer.

MR. KEEGAN: We are offering Nordin's testimony, from page 924 to 977. That is 53 some pages and we won't

read it to the jury nor will we require the Government to read it, but it is available to the jury if they want to read it.

THE COURT: Mr. Wohl's statement of the way it should be done is correct.

Overruled.

MR. KEEGAN: He doesn't consent, in other words?

THE COURT: I gather not. Overruled.

MR. CHESTER: I don't understand criminal law, but if the prosecutor out of the greatness of his heart says if everybody will stipulate that the jury can have it, and we so stipulate, can't that go to the jury without the Judge saying it can't, if he wants to stipulate?

MR. WOHL: My position --

THE COURT: No, no. It is the Judge's responsibility to see the record is not unnecessarily burdened and, as Mr. Wohl said, you have the same opportunity that he has to go through that and put in evidence any passage which you say is inconsistent with what the witness has said specifically.

MR. CHESTER: Judge, I have one other small motion.

At this point I think he is trying to impeach his own witness. His witness just got through saying, and

he is trying to get in about a 60-40 split -- the witness' testimony, and the Court Reporter will read it back, "I can't recall whether Reynolds agreed to it or not."

So now what he is trying to do is rehabilitate his own witness and try to get him to say that he did agree to it, and he just said five minutes ago that Mr. Reynolds, he can't recall whether he did.

THE COURT: Was that on cross-examination?

MR. CHESTER: That was by his direct examination, and Mr. Nordin said Mr. Chester and Mr. Reynolds were holding a discussion as to splitting up the company and he said he can't recall whether Reynolds agreed to a 60-40% split.

That is in the record.

Isn't that right, Mr. Nordin?

MR. WOHL: I object to this.

MR. CHESTER: He is shaking his head "yes," Judge.

THE COURT: You are saying that on this re-direct he was asked whether he recalled that discussion of the 60-40 and he said he could not?

MR. CHESTER: That is correct.

THE COURT: And Mr. Wohl is now offering this prior statement --

MR. CHESTER: To impeach his own witness.

Now if that can be done, I never have heard or seen that before.

THE COURT: What do you say, Mr. Wohl?

MR. WOHL: The Government's position, your Honor, is that he hasjust testified concerning the conversation. He said he did remember the conversation and he has told us what his recollection was, that Mr. Chester

made this announcement, they discussed it back and forth and he couldn't remember whether Mr. Reynolds accepted the agreement or not.

That is what he has just testified to.

MR. CHESTER: That is correct.

MR. WOHL: He has also testified concerning that in the 1972 proceeding.

Mr. Keegan referred to that prior testimony and read portions of it but did not read what the Government submits to be the entire passage related to that conversation and didn't put it into evidence.

All I am doing is putting it into evidence. It is slightlydifferent from what the witness has just testified to.

Whether the jury thinks that it is a matter of great difference, of some significance, or not, is for the jury to decide. Iam just putting it in so they have both what he said before and what he says now and they can make up their own minds.

MR. KEEGAN: I take exception to Mr. Wohl's constant remarks that I did not read the entire portion. I don't like the insinuation that he should decide what I do on cross-examination. He did that all day yesterday, controlled the cross-examination of all these gentlemen,

told them what they should read and shouldn't read, including all the garbage Andrews had to put in, and he is running the whole show in this courthouse.

THE COURT: Proceed,Mr. Wohl.

MR. WOHL: The questions and answers are as follows:

"Q Back to National Ventures.

"Do you know what Mr. Reynolds and Mr. Chester were to get out of National Ventures?

"A No, sir. They had already made their decision as to what shares were to go to whom.

Q Do you know what their arrangement was?

A 60% for Mr. Chester and 40% for Mr. Reynolds and then the stockholders that was already in the company."

Q While we are at the transcript, Mr. Nordin --

MR. WOHL: I would ask pages 948 and 947 be marked as Government Exhibit 104 for identification. Oh, excuse me, I will change that slightly. 946 through 952 should be marked as Government Exhibit 104 for identification.

MR. CHESTER: What pages?

MR. WOHL: 948 through 952.

xx (Government Exhibit 104 marked for identification)

Q Mr. Nordin, do you recall when Mr. Higgins was questioning you concerning the batch of stock that you brought up to New York, the 50,000 shares in the name of Lockwood?

A Yes, sir.

Q And he asked you whether you testified on a prior occasion that you were instructed not to put a legend on that stock, didn't he?

A As best I recollect, yes, sir.

Q And then he showed you a portion of the transcript, is that right?

A I really don't know, but I would say yes, sir.

MR. CHESTER: Objection, your Honor.

If he doesn't know, he doesn't know, but because it is the prosecutor, he will say "I don't know, but yes, sir."

Q I am showing you --

MR. CHESTER: I object. I don't think he can say he doesn't know and then say "I think yes, sir."

* * *

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THE COURT: Before we recess, Mr. Rubinson, I cautioned you yesterday about shouting out from your seat, did I not?

MR. RUBINSON: Yes, Ma'am. I'm sorry I did that, but under the circumstances, what has happened here, I was ready to make a motion that all this evidence be stricken as to me because there is not one signature of mine, not one piece of paper that involves me, and he keeps injecting Rubinson and this witness keeps saying "yes," that he remembers everything about me, that he even remembers I took $100 out of my left pocket, not my right, but can't remember anything else as to my benefit.

I make a motion at this time that all 102 exhibits be discarded because it doesn't bear on me, not subject to any connection, but stricken out completely.

THE COURT: That motion is denied.

I have to caution you that if you continue to yell out, the Court is going to have to take measures which

you may not like in order to keep you from yelling out.

Do you understand that?

MR. RUBINSON: Yes, Ma'am.

THE COURT: You are not here because this is a theatre and because we are here to make jokes and to yell out.

Do you understand that?

MR. RUBINSON: Yes, Ma'am.

THE COURT: These proceedings must be orderly and you are disrupting the proceedings by yelling out and the Court warns you against doing that again and if you do it again, I will take measures which you will not like to keep your mouth closed.

Do you understand that?

MR. RUBINSON: Yes, Ma'am.

MR. FISCHETTI: May I ask a question of the Court, your Honor?

I am unclear on the offer of evidence by Mr. Wohl received by your Honor as to a prior sworn statement of this witness into evidence. Has he offered it on the grounds that a recent fabrication has been charged, has he offered it as a prior consistent statement?

I don't understand the basis of the offer in case I want to do something similar with the witness.

MR. WOHL: The basis of the offer, and this applies to Exhibit 104, is that the jury was given the impression on cross-examination that the witness did not testify on a prior occasoin concerning instructions to leave the legend off the stock and the transcript will indicate that he did so testify and, consequently, it is proper re-direct.

THE COURT: Yes.

* * *

THE COURT: You may continue, Mr. Wohl.

MR. WOHL: Thank you, your Honor.

At this time the Government offers Government Exhibit 104 for identification into evidence.

It consists of pages 946 through 952, the February 1972 testimony of Mr. Nordin.

MR. ANDREWS: May I be heard, your Honor?

THE COURT: Just a moment.

You may proceed, Mr. Wohl.

MR. WOHL: I have offered the exhibit.

THE COURT: This is 104?

MR. WOHL: Yes.

THE COURT: Any objection to 104?

MR. ANDREWS: I have an objection.

I object to the piecemeal offer of lines and pages from this transcript and I would consent to the entire transcript coming in.

The piecemeal approach dictates what comes in and as Mr. Grimes points out, only with respect to Mr.Nordin. We are not saying put the whole trial in. But the piecemeal approach the Government is taking has the effect of taking these pages out of context and if there is one thing that is sure with this witness is we shouldn't take anything he says on a page out of context with his entire

testimony.

We have to get the whole testimony to get the flavor of what he is talking about in these few pages.

If the Government consents to the entire transcript I withdraw my objection. I object to an isolated few pages.

THE COURT: Overruled.

Let it be received.

xx (Government Exhibit 104 received in evidence)

* * *

* * *

"Q What did the owner of Lockwood do?

"A He did the same thing too. He gave me the money.

"Q $100?

"A Yes, in cash.

"The Court: The owner of Lockwood?

"The Witness: Yes.

"The Court: Can you identify him by name?

"The Witness: Sir, I have tried to do the best I can but I don't know for sure, the name Levine, Levine comes-- that is what I would want to say.

"The Court: What did he look like?

"The Witness: He was heavyset, about 5 foot 9, 5 foot 8, maybe a little taller, heavy, 45, 50, and this is two years ago.

"The Court: Did he wear glasses?

"The Witness: To the best of my knowledge, no, sir, he did not wear glasses. The only thing I can say is when I walked into the office, I had gone back to 55 Liberty Street purposely to try to find that office that I went to in my opinion the number, the figure in the teens stuck in my mind--"

MR.CHESTER: I make an objection. He is reading

halfway through this.

Why not read the whole thing and save time with all the objections?

He is reading for a half hour.

If we start making objections and get somebody on the stand and read it, we can be through in 15 minutes.

Is he reading parts? He has the witness there, let him examine the witness.

Why go back to 1972? You are trying your own case today. I don't understand what he is doing. I have never heard of being able to impeach your own witness.

Maybe this is something new. I am no criminal lawyer but I always heard you had to ask your own witness what he said and what he did and I can't understand him.

He has read at least fifteen pages of a 50-page deposition.

Let's read the whole thing and the jury will have it.

That is my motion.

THE COURT: Denied.

MR. WOHL: May I continue?

"A (continuing)-- I went up to 19, I walked to the back office on the 19th and there I could not find a deluxe suite such as I went to directly because I called Mr.Rubinson

from the airport. As soon as I arrived I was told what to do. The office I went to was very plush and very deluxe but I did go to Lockwood & Company.

"I understand fromthe building maintenance they have changed over several times. I don't know what office he was in."

Page 952:

"But I did meet Mr. Rubinson and the owner of Lockwood. At least I was told that he was the owner of Lockwood.

"Q Look at those certificates in your hand, Mr. Nordin, which bear Exhibit 128.

"Do you see a restrictive legend on those certificates?

"A No, sir.

"Q Is there any reason why they are not there?

"A The instructions would have been not to have the legend placed on the certificates."

MR. CHESTER: I object to that, "would have been."

Let him ask him. It comes in through the back door again. If he was instructed, he said it there, let him testify. This leaves it unclear.

THE COURT: Mr. Chester, you will have a chance to recross the witness. He is reading from prior testimony.

MR. ANDREWS: If I may be heard-- I understand that the transcript was offered or the portion of it to establish that the witness had made a prior reference to the deletion of the legend on the stock.

Is that correct?

Is that the basis of the offer?

MR. WOHL: That is right.

MR. ANDREWS: In some six pages admitted into evidence there are four sentences regarding the deletio of the legend on the stock. I move that the rest of it be stricken from evidence and those sentences be admitted.

In the alternative, if your Honor admits all of what Mr. Wohl read into evidence, then all the rest of it regarding the identity of the individuals should be admitted as well for the sake of absolute, fundamental fairness, Judge.

THE COURT: Had that been previously shown to the witness, all that you read?

MR. WOHL: I think some of this but not all of it was referred to by Mr. Andrews but on this particular point, no, your Honor, I believe Mr. Higgins described earlier what he showed to the witness, which was the beginning portion on pages 946, 47 and 48 and then the reference to this testimony concerning instructions not to put the legend on the stock appears on page 952.

If Mr. Andrews --

THE COURT: What we are trying to get at is whether what you just read was something previously shown to the witness by one of the lawyers on cross examination and asked whether he had not previously so testified.

MR. WOHL: Your Honor, only pages 946, 947 and 948 were shown to the witness.

THE COURT: What did you read in addition?

MR. WOHL: 949 through 952. And I would agree with Mr. Andrews that really the four or five, the top half of line 952 is the portion that answers the question, the part in between is really related to another subject matter.

But I just read it so that there would not be any complaint about leaving something out.

MR. ANDREWS: What happened is that he read in one half of the testimony that would seem to be prejudicial to my client and he omits the other half which clearly indicates that it was not Mr. Levine. This record is replete with it. That is why Mr. Wohl does not want the whole thing in.

If he offers it to prove that the man was instructed not to put a legend on the stock he needs only three sentences. He read seven or eight. This is an insidious way to do this.

THE COURT: As Mr. Wohl points out, the thing for you to do is to offer those portions now which you say are inconsistent so the jury can decide for itself whether this witness' testimony is inconsistent with his prior

testimony.

That is all.

MR. ANDREWS: This is very important.

THE COURT: Mr. Andrews, I have ruled on your objection.

Proceed, Mr. Wohl.

MR. ANDREWS: Is it remaining in evidence, the whole eight pages for the three lines?

THE COURT: Yes.

MR. ANDREWS: With overwhelming prejudice?

THE COURT: Mr. Andrews, I have ruled on your objection and I have said that if you take the time you can do the same thing, put in what you think will influence the jury in your direction just as Mr. Wohl has done. You put in what you think. You go through the record and put in what you think.

MR. ANDREWS: This has not been offered as a prior inconsistent statement. I am vague as to the theory under which it was offered.

THE COURT: We have gone over that and you know that. We went over that just before we took our recess. Please sit down, Mr. Andrews.

Proceed, Mr. Wohl.

* * *